

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

ADVOCACY CENTER and W.B., through his mother  
and next friend Charrie Butler,

PLAINTIFFS,

- AGAINST -

LOUISIANA DEPARTMENT OF HEALTH AND  
HOSPITALS, ALAN LEVINE, MARK ANDERS,  
and MICHELLE DUNCAN, in their official  
capacities,

DEFENDANTS.

CIVIL ACTION NO.:

JUDGE:

MAGISTRATE JUDGE:

COMPLAINT

For the Complaint of Plaintiffs Advocacy Center and W.B., through his mother and next friend Charrie Butler, (“Plaintiffs”) against Defendants Louisiana Department of Health and Hospitals (“DHH”), Alan Levine, Mark Anders, and Michelle Duncan (“Individual Defendants,” and with DHH, “Defendants”), Plaintiffs allege on personal knowledge with respect to their own acts, and upon information and belief with respect to all other matters, as follows:

**PRELIMINARY STATEMENT**

1. This action for declaratory and injunctive relief is based on Defendants’ refusal to accept prompt physical custody of pretrial detainees who have been found to lack the mental capacity to stand trial and have been remanded to the custody of the Feliciana Forensic Facility. Defendants’ refusal to accept physical custody has resulted and is resulting in prolonged and unconstitutional confinement of such pretrial detainees in parish jails.

2. Under the laws of the State of Louisiana (“Louisiana” or “State”), a pretrial detainee who is found incompetent to stand trial must be given restorative treatment in state custody, subjected to civil commitment proceedings, or released from state custody. *See* La. Code Crim. Proc. Ann. art. 648 (2009) (“Article 648”). If he or she is (1) charged with a felony

or select misdemeanors, (2) deemed likely to commit a crime of violence, and (3) his or her mental capacity is not likely to be restored within ninety days, and (4) inpatient restorative treatment is recommended, Louisiana law provides that he or she must be committed to the Feliciana Forensic Facility (“Feliciana”). *See* Article 648(A)(2). Such detainees are referred to herein as “Patient Detainees.” By law, criminal proceedings against Patient Detainees are suspended until their competence is restored.

3. Plaintiffs bring this action because Patient Detainees who have been found by the courts to be incompetent to stand trial and in need of inpatient restorative treatment at Feliciana are not being promptly transferred for treatment. Instead, Patient Detainees—who numbered 130 as of March 2010—are being held in parish prisons, *without regard for their presumed innocence and despite never having been convicted of a crime, for months and even years* before being transferred in accordance with court orders.

4. DHH provided a list to the Advocacy Center showing Patient Detainees as of October 22, 2009. That list showed that in Caddo Parish, for example, one Patient Detainee has been awaiting transfer *since August 13, 2008*. In St. James Parish, the only Patient Detainee has been waiting *since October 3, 2007*. And in St. Tammany Parish, a Patient Detainee has waited *since October 25, 2007*. Indeed, the *average* wait time for Patient Detainees in Louisiana as of October 22, 2009 was *195 days—over 6 months*. Across Louisiana the problem is the same: Patient Detainees wait *months and even years* for transfer from parish prisons to Feliciana.

5. The failure to promptly transfer Patient Detainees is a violation of the Patient Detainees’ right to due process under the United States Constitution.

6. Plaintiffs seek (1) declaratory relief that Article 648 of the Louisiana Code of Criminal Procedure and Louisiana Revised Statute Section 28:25.1 are unconstitutional, and (2) permanent injunctive relief requiring Defendants to promptly provide Patient Detainees with the inpatient restorative treatment they need to proceed to trial.

## **JURISDICTION**

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343, as Plaintiffs' claims arise under the Fourteenth Amendment to the United States Constitution. This Court may grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

8. Venue is appropriate under 28 U.S.C. § 1391(b)(2) because a substantial number of the events giving rise to this Complaint occurred in this district.

## **PARTIES**

### **Plaintiffs: Advocacy Center**

9. Plaintiff Advocacy Center is a private, federally-funded, non-profit corporation, designated by Louisiana to serve as the State's protection and advocacy system for persons with disabilities.

10. The Advocacy Center is part of a nationwide network of disability rights agencies ("Protection and Advocacy" organizations) created under federal law to provide legal representation and other advocacy services on behalf of persons with disabilities. *See* Protection and Advocacy of Individual Rights Program of the Rehabilitation Act of 1973, 29 U.S.C. § 794e (2009); Protection and Advocacy for Individuals with Mental Illness ("PAIMI") Act of 1986, 42 U.S.C. §10801 *et seq.* (2009); Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§15041-45 (2009). Pursuant to these statutes, Protection and Advocacy organizations are authorized to investigate incidents of abuse or neglect of such persons, to enforce the federal and state constitutional and statutory rights of such persons through administrative, legal, and other appropriate remedies, and to provide information and referrals relating to programs and services addressing the needs of such persons. *See id.*

11. In addition to a governing board, the Advocacy Center has an advisory board known as a "PAIMI Council." Ninety percent of its PAIMI Council members have received or are receiving mental health services or are family members of such individuals. The Advocacy Center's PAIMI Council also includes mental health professionals and individuals from the

public who are knowledgeable about mental illness. Because so many people on the PAIMI Council have family members with mental health issues, it is not surprising that some of those family members have ended up in the criminal justice system, and inevitable that such involvement will continue.

12. The Advocacy Center has met with Patient Detainees who have been, or are being, held for extended periods in parish prisons despite having been found incompetent to stand trial and unlikely to be restored to competence in ninety days, and having been committed to Feliciana for inpatient restorative treatment. The mental state of some of these individuals is so severely impaired that they appear to be unable to understand their rights or to retain civil trial counsel. Each Patient Detainee is a constituent of the Advocacy Center and has suffered, and/or is continuing to suffer, an injury that would allow him or her to bring suit in his or her own right. Patient Detainees without either relatives or friends with whom they are in contact while in jail have no one other than the Advocacy Center to act on their behalf in civil matters.

13. The Advocacy Center brings this suit as an associational plaintiff on behalf of Patient Detainees who allege that the State's mental incapacity statutes violate the Fourteenth Amendment to the United States Constitution.

**Plaintiffs: W.B.**

14. Plaintiff W.B. is a resident citizen of Orleans Parish who was born in 1992. W.B. brings this action through Charrie Butler, his mother and next friend.

15. As of the filing of this Complaint, W.B. has been incarcerated by the State of Louisiana for 251 days. W.B., like all Patient Detainees, has been arrested but not yet tried or convicted of a crime in connection with his incarceration. Because W.B., like all Patient Detainees, has been found to lack the mental capacity to proceed to trial, his prosecution has been suspended pursuant to Article 648(A).

16. On September 3, 2009, W.B. was charged with two counts of violating Louisiana Revised Statute Section 14:64.3, Armed Robbery with a Firearm, and one count of violating Louisiana Revised Statute Section 14:30, Attempted First Degree Murder. He was booked into Orleans Parish Prison.

17. On October 1, 2009, W.B. was adjudged incompetent to stand trial and remanded to Feliciana. As of the filing of this Complaint, W.B. has not been transferred to Feliciana and instead remains incarcerated at Orleans Parish Prison.

18. W.B. says that he dropped out of school in eighth grade. He reports that he is occasionally visited by a social worker at Orleans Parish Prison. W.B. denies a diagnosis of mental illness and says that he does not take any medication. He claims not to know why he is detained or the contents of the charges against him.

19. W.B. reports that he is being treated “terribly” in Orleans Parish Prison; his complaint stems mostly from the fact that “little men” visit him every night in his sleep—punching him, running away, and telling him “we’ll be back.” W.B. says that these “little men” began visiting him long before he was incarcerated.

20. W.B. claims that he tried to hurt himself with a razor before his current incarceration and that he has tried to hurt himself again since being detained. W.B. says that he saw a psychiatrist after he tried to hurt himself in jail, although he does not believe the psychiatrist provided much help.

21. W.B.’s most recent court hearing was January 14, 2010, at which time the court scheduled a follow-up status hearing for April 15, 2010. W.B. would like to go to Feliciana for assistance, but he is still awaiting transfer to Feliciana for the inpatient restorative treatment that he needs to have his day in court.

## Defendants

22. Defendant Louisiana Department of Health and Hospitals (“DHH”) is the agency responsible for the development and coordination of services for persons with mental illness, mental retardation, developmental disabilities, and addictive disorders; for public health services; and for services provided under the Medicaid program. *See* La. Rev. Stat. Ann. § 36:251, *et seq* (2009).

23. As of the filing of this Complaint, Defendant Alan Levine is the Secretary of DHH. Pursuant to Louisiana Revised Statute Section 36:253-54, he is responsible for the policies of DHH and for the administration, control, and operation of DHH functions and programs. Mr. Levine is sued in his official capacity only.

24. As of the filing of this Complaint, Defendant Mark Anders is the Chief Executive Officer of the Eastern Louisiana Mental Health System (“ELMHS”), a part of DHH. ELMHS provides mental health evaluation, treatment, habilitation, and consultation for children, adolescents, and adults. ELMHS comprises two divisions—the East Division and the Forensic Division. Mr. Anders is sued in his official capacity only.

25. As of the filing of this Complaint, Defendant Michelle Duncan is the Director of the Forensic Services Division of ELMHS (as previously defined, “Feliciana”). Feliciana provides services to adults who are sent there through legal proceedings. Such services include assessment and therapies directed toward treatment and stabilization of psychiatric disorders, treatment of substance abuse disorders, behavior management, and enhancement of interpersonal skills. Ms. Duncan is sued in her official capacity only. Ms. Duncan and Messrs. Levine and Anders are the “Individual Defendants.”

## STATEMENT OF FACTS

26. Louisiana imprisons Patient Detainees for *months*, and *even years*, without providing them with the treatment needed to restore their competence.

27. As of October 22, 2009, approximately 104 Patient Detainees were awaiting transfer to Feliciana. That number may in fact be higher: according to a March 2010 DHH publication, 130 people were being held in local jails waiting for access to a bed at Feliciana Forensic Hospital. Each Patient Detainee has been judged mentally incompetent to stand trial, is charged with a felony or a misdemeanor classified as an offense against the person, has been deemed likely to commit a crime of violence, is unlikely to be restored within ninety days, and has been recommended for inpatient treatment. And each of these Patient Detainees is now being held in a parish prison without the ability to receive needed inpatient restorative treatment or to proceed to court to stand trial. Instead, these individuals sit in prison as if convicted on the charges for which they only stand accused.

28. As of October 22, 2009, nearly half of the 104 Patient Detainees had waited *over 180 days* since they were ordered to be transferred to Feliciana. Moreover, some of these same detainees had either not received, or not timely received, the status conference to which they were entitled after being held as a Patient Detainee in a parish prison for over 180 days.

29. As of October 22, 2009, almost twenty of these detainees—if not more—had been held in parish prisons for *more than 360 days* after being ordered to Feliciana. As a result, they are entitled to another hearing to determine whether they should be released or civilly committed—but such hearings rarely occur.

30. As of October 22, 2009, some Patient Detainees had been waiting for *over two years* for transfer to Feliciana. Depending on how long these detainees were incarcerated in parish prisons before competency was even raised, many—if not most—have spent *more than two years* of their lives incarcerated, waiting for restorative treatment that would simply enable them to stand trial.

31. The most recent statistics for Orleans Parish further demonstrate the problem with Louisiana's treatment of Patient Detainees. The patient waiting list provided by Orleans Parish to the Advocacy Center on January 14, 2010 indicates that 28 Patient Detainees in Orleans were awaiting transfer to Feliciana. Within this group, the average wait time since the court ordered transfer to Feliciana was *161 days*. Several detainees have awaited transfer for *more than 250 days*, with some wait times *exceeding 440 days*.

32. The patient waiting list provided by DHH to the Advocacy Center on October 22, 2009, indicates that Patient Detainees experience similarly significant wait times across the State. These statistics speak for themselves: Louisiana's process for restoring the competence of Patient Detainees is broken.

- Caddo Parish, housing three Patient Detainees, one of whom had been awaiting transfer since August 13, 2008 (as of October 22, 2009, 435 days);
- East Baton Rouge Parish, housing eight Patient Detainees, one of whom had been awaiting transfer since April 1, 2009 (as of October 22, 2009, 204 days);
- Jefferson Parish, housing thirteen Patient Detainees, one of whom had been awaiting transfer since June 4, 2008 (as of October 22, 2009, 505 days);
- Lincoln Parish, housing eight Patient Detainees, one of whom had been awaiting transfer since September 17, 2008 (as of October 22, 2009, 400 days);
- Livingston Parish, housing one Patient Detainee, awaiting transfer since May 14, 2009 (as of October 22, 2009, 161 days);
- Ouachita Parish, housing two Patient Detainees, one of whom had been awaiting transfer since October 1, 2008 (as of October 22, 2009, 386 days);
- Rapides Parish, housing four patient detainees, one of whom had been awaiting transfer since August 25, 2008 (as of October 22, 2009, 423 days), another since October 2, 2008 (385 days), another since November 3, 2008 (353 days), and the last since April 1, 2009 (204 days);



- Richland Parish, housing one Patient Detainee, awaiting transfer since May 13, 2009 (as of October 22, 2009, 162 days);
- St. Bernard Parish, housing one Patient Detainee, awaiting transfer since November 12, 2008 (as of October 22, 2009, 344 days);
- St. Helena Parish, housing one Patient Detainee, awaiting transfer since May 2, 2008 (as of October 22, 2009, 538 days);
- St. James Parish, housing one Patient Detainee, awaiting transfer since October 3, 2007 (as of October 22, 2009, 750 days);
- St. Tammany Parish, housing eight Patient Detainees, one of whom had been awaiting transfer since October 25, 2007 (as of October 22, 2009, 728 days);
- Tangipahoa Parish, housing three Patient Detainees, one of whom had been awaiting transfer since March 6, 2009 (as of October 22, 2009, 230 days);
- Union Parish, housing one Patient Detainee, awaiting transfer since July 22, 2009 (as of October 22, 2009, 92 days);
- Washington Parish, housing three Patient Detainees, one of whom had been awaiting transfer since July 4, 2008 (as of October 22, 2009, 475 days);
- Webster Parish, housing one Patient Detainee, awaiting transfer since April 13, 2009 (as of October 22, 2009, 192 days).

### **Louisiana Mental Incapacity Statutes**

33. In Louisiana, a criminal defendant lacks the mental capacity to stand trial when, “as a result of mental disease or defect, a defendant presently lacks the capacity to understand the proceedings against him or to assist in his defense.” La. Code Crim. Proc. Ann. art. 641 (2009).

34. Mental incapacity may be raised at any time by the defense, the district attorney, or the court. *Id.* at art. 642. Importantly, “[w]hen the question of the defendant’s mental incapacity to proceed is raised, there shall be no further steps in the criminal prosecution . . . until

the defendant is found to have the mental capacity to proceed.” *Id.* As a result, a pretrial detainee who is found mentally incompetent cannot pursue his or her right to stand trial until mental capacity is restored.

35. When there is reasonable ground to doubt a defendant’s mental capacity to proceed with a criminal prosecution, the court must issue an order for a mental examination. *Id.* at art. 643. Within seven days of such an order, a sanity commission must be appointed to examine and report on the pretrial detainee’s mental condition. *See id.* at art. 644(A).<sup>1</sup>

36. A sanity commission has thirty days to complete its mental examination of a defendant and file its report with the court, during which time a pretrial detainee will remain in custody unless he or she was already released on bail. A court may, however, extend the time a sanity commission has to file its report. *See id.* at art. 645(B). At this point, then, a mentally incompetent pretrial detainee may have been in custody for thirty-seven days—and is likely to have been in custody much longer. Because parish prisons are wholly unequipped to provide restorative mental health treatment for the vast majority of detainees, such detainees will not yet have started the restorative treatment needed to restore competence and advance to trial.

37. After the sanity commission has completed its report, the issue of the defendant’s mental capacity to proceed is determined at a competency hearing. *See id.* at art. 647. At this point, a pretrial detainee has still not received the type of restorative mental health treatment needed to restore competence and advance to trial.

38. If a pretrial detainee is found by a preponderance of the evidence to lack the mental capacity to proceed to trial, all legal proceedings are suspended and one of three dispositions occurs. *See Article 648.*

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<sup>1</sup> Pursuant to Louisiana Code of Criminal Procedure Article 644(D), a local mental health unit may be appointed in lieu of a sanity commission in certain circumstances. Accordingly, use of the term “sanity commission” in the Louisiana Code of Criminal Procedure, and in this Complaint, also includes local mental health units. *See id.* at art. 644(D)(2)(a).

39. If a court determines that (1) a pretrial detainee's mental capacity is likely to be restored by outpatient care within ninety days, (2) the detainee is not charged with a felony or a misdemeanor that is an offense against the person, and (3) the detainee is deemed unlikely to commit crimes of violence, then a court can order outpatient treatment. *See id.* at Art. 648(A)(1). Only pretrial detainees who are found to be nonviolent and unlikely to require more than ninety days of inpatient care are eligible for restorative treatment outside of state custody. All other pretrial detainees fall under the second or third dispositions.

40. In those cases in which a pretrial detainee (1) has been charged with a felony or a misdemeanor classified as an offense against the person, (2) is deemed by a court to be likely to commit a crime of violence, and (3) is determined likely to have his or her mental capacity restored within 90 days as a result of treatment, the court may order such immediate jail-based treatment by DHH (*i.e.*, not by the parish jail) for a period not to exceed 90 days. But if a detainee's mental capacity is not likely to be restored within ninety days and inpatient treatment has been recommended, Louisiana law provides that he or she *must* be committed to the Feliciana Forensic Facility. *See id.* at Art. 648(A)(2). This is the group of persons referred to in this Complaint as "Patient Detainees." Feliciana is the only facility in Louisiana equipped to administer inpatient restorative treatment to Patient Detainees.

41. Simply because a Patient Detainee is remanded to Feliciana, however, does not mean that the detainee is immediately sent there. Louisiana law permits—indeed, requires—the administrator of Feliciana to refuse to admit Patient Detainees to Feliciana if transferring them to the facility would cause overcrowding, or if it "is unable to provide appropriate care or treatment." La. Rev. Stat. Ann. § 28:25.1(C)(2)(a)(i) and (ii).

42. Louisiana law recognizes and even condones the failure to promptly transfer Patient Detainees to Feliciana, as it provides that if a Patient Detainee is held in a parish prison for 180 days following the determination that he or she lacks the mental capacity to proceed to trial, a court shall call a status conference, which may then lead to a second hearing "to determine whether there has been a change in the defendant's condition or other circumstances

sufficient to warrant a modification of the previous order.” La. Code Crim. Proc. Ann. art. 648(A)(2)(b). At this point, a Patient Detainee will usually have remained in parish prison—without the type of restorative mental health treatment needed to restore competence and advance to trial—for *over 210 days* since his or her arrest, despite the fact that such Patient Detainee is *presumed innocent and has not been convicted of any crime* in connection with his or her incarceration.

43. Only if 360 days or more—nearly a year—has passed since the Patient Detainee was committed to Feliciana, yet is still being held in the parish jail, must the court hold a hearing to determine whether to release the Patient Detainee or order civil commitment proceedings. Article 648(A)(2)(c). No time limit is set for when the civil commitment proceedings must occur, and Article 648(A)(2)(c) specifies that the Patient Detainee remains in custody until the civil commitment proceedings are completed.

44. Both facially and as applied, Article 648 of the Louisiana Code of Criminal Procedure and Louisiana Revised Statute Section 28:25.1 deny Patient Detainees their right not to be incarcerated for longer than the reasonable period of time necessary to determine their capacity to proceed to trial, and their right to the restorative treatment needed to attain that goal.

### **Louisiana’s System Utterly Fails Mentally Incompetent Pretrial Detainees**

45. Feliciana is Louisiana’s only State inpatient forensic center for Patient Detainees, and the laws of Louisiana dictate that Patient Detainees shall be committed to Feliciana. Feliciana is the only place where a Patient Detainee can hope to receive inpatient restorative treatment enabling him or her to have competency restored and stand trial.

46. Feliciana serves convicted prisoners and pretrial detainees by, for example, providing assessment and therapy for psychiatric disorders, behavior management, and enhancement of interpersonal skills.

47. Feliciana is specifically designed to provide inpatient treatment to restore the Patient Detainees to competence, thereby enabling them to stand trial. At Feliciana, patients are housed in bedrooms connected to a secure common area instead of being confined to cells; are treated by an on-site psychiatrist and nurses who are trained to deal with psychotic and mentally ill patients; are watched by guards who are trained to deal with at-risk detainees; and receive direct observational therapy.

48. Parish prisons are not adequate substitutes for Feliciana. They do not, and cannot, supply the kind of inpatient restorative treatment that DHH is obligated to provide under Article 648(A)(2).

49. It is precisely because inpatient restorative treatment of Patient Detainees is the responsibility of DHH under Louisiana law that this action is not directed at parish prisons, which are in any event wholly unequipped to provide the type of restorative treatment needed to return Patient Detainees to competence. Indeed, parish prisons often struggle to provide even basic mental health treatment, leaving Patient Detainees in the general prison population—in the company of convicted offenders—or placing them in solitary confinement due to the disruptive behaviors caused by their illnesses. Many prisons lack psychiatric units entirely, and even those that have such units are unable to provide Patient Detainees the inpatient restorative care they need.

50. For example, a 2009 report by the U.S. Department of Justice criticized even the basic mental health treatment provided by Orleans Parish Prison, a problem caused, according to the Orleans Criminal Sheriff, by inadequate staffing due to inadequate funding.

51. Sheriffs themselves have recognized that local jails lack the proper facilities to care for incompetent pretrial detainees. For example, when Sheriff A.R. “Buddy” Hodgkins of the Louisiana Sheriffs’ Association testified before the Louisiana House Committee on the Administration of Criminal Justice on May 24, 2006, he explained that local jails lack the resources to properly care for incompetent detainees, and that any such efforts were dangerous to the detainees and others.

52. In a November 20, 2009, article in the Times-Picayune, Dr. Demaree Inglese, medical director of St. Tammany Parish jail, echoed Sheriff Hodgkins's sentiment. Commenting on the suicide of an inmate with a history of mental illness, Dr. Inglese explained that the inmate should not have ended up in jail, but in a facility with the resources and personnel to treat him. Dr. Inglese warned: "[t]he more and more mentally ill patients we have being dumped on the correctional system, the more and more suicides we're going to see."

53. Without proper medical care and segregation from the general prison population, Patient Detainees often rapidly and radically destabilize. Depending on the individual detainee, these destabilizations can be—and often are—permanent, depriving the individual of much more than his or her chance to mount a defense in court. Indeed, some Patient Detainees experience such a lack of care that they undergo a deterioration of their psychological well-being and mental capacity to the point that rehabilitation becomes impossible.

54. Even parish prisons that have mental health units—such as Orleans Parish Prison and St. Tammany Parish Prison—cannot and do not provide inpatient restorative treatment as required under Article 648(A)(2) and are ill-equipped to properly protect Patient Detainees from further harm and mental deterioration. Orleans Parish Prison, for example, provides inadequate suicide prevention for mental health prisoners and has failed to timely assess and treat pretrial detainees with mental illnesses. St. Tammany Parish can only guarantee constant supervision for a suicidal Patient Detainee by holding him in a three-foot-by-three-foot intake cage. Putting aside competency restoration, this type of care causes unnecessary suffering to individuals who simply require medical attention.

55. By contrast, Feliciana does provide inpatient restorative treatment, as required under Article 648(A)(2), and is equipped to treat and restore Patient Detainees. Feliciana's treatment of suicidal detainees alone speaks to the difference between it and the parish prisons: at Feliciana, a guard is assigned to stay within arm's length of a detainee who is deemed suicidal.

56. Patient Detainees are not being transferred to Feliciana, as required by law, for one simple reason: Feliciana is full. Few, if any, beds are available for Patient Detainees. And,

as discussed above, La. Rev. Stat. Ann. Section 28:25:1 (2009) requires the Feliciana administrator to refuse admission to a Patient Detainee if admission would cause overcrowding.

57. While the goal of avoiding overcrowding at Feliciana is worthy, the lack of beds at Feliciana cannot be used to deny Patient Detainees their constitutional rights.

58. As a direct and proximate result of the foregoing, W.B. and other Pretrial Detainees have suffered, continue to suffer, and will likely suffer in the future the loss of their freedom and deprivation of their liberties, as well as violation of their statutory and constitutional rights. Each of these persons is a constituent of the Advocacy Center.

59. By this action, Plaintiffs seek to vindicate the public interest by enforcing Patient Detainees' clearly established right not to be incarcerated for longer than the reasonable period of time necessary to determine their capacity to proceed to trial and their right to the restorative treatment needed to attain that goal.

60. Plaintiffs have no complete and adequate remedy at law.

### **CAUSE OF ACTION**

#### **VIOLATION OF DUE PROCESS UNDER FOURTEENTH AMENDMENT OF UNITED STATES CONSTITUTION**

61. Plaintiffs incorporate by reference paragraphs 1 to 60 of this Complaint.

62. Due process requires that the nature and duration of confinement must bear reasonable relation to the purpose for which the individual is committed.

63. Once a Pretrial Detainee is found unable to aid and assist in his own defense, the only lawful purpose for continued criminal confinement is to treat the person so that he or she may be restored to competency.

64. Individuals found to be lacking the mental capacity to proceed to trial but whose capacity may be restored have a constitutional right to treatment that will give them a realistic opportunity to be cured or to improve their mental condition.

65. Parish jails do not have the capacity to provide the restorative mental health treatment required by the U.S. Constitution.

66. Defendants have refused and are refusing to allow prompt transfer of Pretrial Detainees from parish jails to Feliciana.

67. Defendants, by requiring persons who have been found to lack the mental capacity to proceed to remain in parish jails, which are places of confinement, rather than promptly accepting them at Feliciana, have violated the Pretrial Detainees' rights under the due process clause of the Fourteenth Amendment to the U.S. Constitution.

68. Louisiana's above-described mental incapacity statutes are unconstitutional as written to the extent that they violate the clearly established rights of W.B. and all Patient Detainees under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, by depriving them of their right not to be incarcerated for longer than the reasonable period of time necessary to determine their capacity to proceed to trial and their right to the restorative treatment needed to attain that goal.

69. Louisiana's above-described mental incapacity statutes are also unconstitutional as applied because they violate the clearly established rights of W.B. and all Patient Detainees under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, by depriving them of their right not to be incarcerated for longer than the reasonable period of time necessary to determine their capacity to proceed to trial and their right to the restorative treatment needed to attain that goal.

70. By this action, Plaintiffs seek to vindicate the public interest by enforcing fundamental constitutional rights of Patient Detainees not to be incarcerated for longer than the reasonable period of time necessary to determine their capacity to proceed to trial and to the restorative treatment needed to attain that goal.



## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that judgment be entered in their favor and against Defendants as follows:

1. Granting preliminary and permanent injunctive relief requiring Defendants to promptly accept physical custody of W.B. and all other Pretrial Detainees (as defined above) within a reasonable period of time, not to exceed seven days from the date they are committed to the Feliciana Forensic Facility for restorative treatment;

2. Declaring that Defendants must accept physical custody of Pretrial Detainees (as defined above) within a reasonable period of time, not to exceed seven days from the date they are committed to the Feliciana Forensic Facility for restorative treatment;

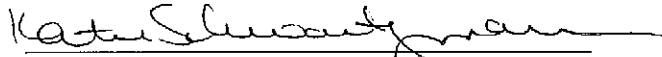
3. Declaring that Louisiana Code of Criminal Procedure Article 648(A)(2)(b) and (c) is unconstitutional as written because it violates the rights of W.B. and all Patient Detainees under the Due Process Clause of the Fourteenth Amendment of the United States Constitution not to be incarcerated for longer than the reasonable period of time necessary to determine their capacity to proceed to trial and their right to the restorative treatment needed to attain that goal;

4. Declaring that Louisiana Code of Criminal Procedure Article 648(A)(2)(b) and (c) and Louisiana Revised Statute Section 28:25.1(C)(2)(a)(i) and (ii) are unconstitutional as applied because they violate the rights of W.B. and all Patient Detainees under the Due Process Clause of the Fourteenth Amendment to the United States Constitution not to be incarcerated for longer than the reasonable period of time necessary to determine their capacity to proceed to trial and their right to the restorative treatment needed to attain that goal;

5. Awarding attorneys' fees and costs incurred in the prosecution of this action pursuant to, *inter alia*, 42 U.S.C. § 1988 and other applicable laws;

6. Granting such other and further relief as the Court may deem just and proper.

Dated: April 12, 2010



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*\*Motion for Admission Pro Hac Vice Pending*

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