

THE THORN

STARC-Oakview
Newsletter

Editor: KERRY KOTLER / G#70954 / 405 / P.O. Box 300, Marcy, N.Y. 13403

A. INTRODUCTION

Welcome to the first issue of The Thorn.

Because OMH seems to believe they have the legal authority to restrict residents from communicating with one another, the editor will not provide copies of this newsletter directly to detainees at STARC-Oakview.

However, the Thorn is written in the hope the attorneys of civil detainees, public officials, and certain advocates will share the information it contains with individuals in civil custody.

That said, this issue summarizes matters that the editor hopes the reader will find of some use and interest.

B. CIVIL COMMITMENT OF THE HOMELESS

Through the efforts of New York City Mayor ERIC ADAMS, it is likely New York will soon start civilly committing the "homeless".

Governor KATHY HOCHUL appears to be on board with the plan, and a few months ago promised Mayor ADAMS an initial 50 beds so that he can begin sweeping up homeless people. Other cities across the State will surely follow; and the State of California is now looking to do the same.

In a recent state of the State speech, Governor HOCHUL said she wanted to appropriate one billion dollars of tax payer money to "mental health care", which appears aimed at confining the homeless.

As bad as it sounds, this could be good news for sex offenders civilly committed across the country, where it should shed badly needed light on civil commitment practices.

In Governor HOCHUL's state of the State speech she also indicated a willingness to look at said practices, and acknowledged a need for "greater accountability" with regard to the manner in which individuals are "admitted and discharged" from civil custody.

Detainees should know this new willingness may be the direct result of: (i) the proposal to commit the homeless; and (ii) recent discussions between the governor and legislators expressing concern over New York's current civil commitment program and its costs.

C. MHLS / PROPOSED CIVIL RIGHTS ACTION

Recently attorneys from the local office of MHLS agreed to file a civil rights action in federal court to challenge the living conditions and lack of a meaningful treatment program at STARC.

The number of legal claims that will ultimately be raised is still an open question. However, it appears a tentative decision has been made by MHLS to challenge: #1) the lack of meaningful treatment and path through treatment; and #2) the punitive nature of the living environment at STARC.

If residents at STARC want to help and become more involved in this legal action, they should not call and complain to MHLS every time an issue concerns them.

Instead, they should write Objections to Care & Treatment upon the matters, and take appeals from all determinations that do not result in clear resolutions.

This will help "develop the record" for the proposed legal action, and having residents call MHLS every day to vent will only take away from the time they have to work on the serious matters subject the legal action currently being drafting.

Copies of complaints, and related appeals residents file with STARC and OMH in Albany should be sent to JOSEPH BETAR at the Utica office of MHLS for review and possible use in the federal action.

STARC residents should also send Mr. BETAR copies of any complaints and letters already written since the facility was reorganized under "STARC" related to matters of significant.

D. TREATMENT

There has been an important decision out of the U.S. District Court, S.D. Illinois, in the case of Howe v. Godinez. [Id., case number 14-cv-844-SMY (9/6/21).]

The Illinois court found, after holding a hearing and listening to the testimony of experts, that a minimum of "7½ hours of core group therapy per week" was required for committed sex offenders, and that each group session should last "no less than 90 minutes".

The Illinois Court also agreed with an expert who testified that the treatment provided in Illinois was flawed, where it was "slow, repetitive, and not catered to the mission of treating the men and returning them to the community as quickly as possible."

Although New York spends more than any other state to civilly house and treat sex offenders, and claims "best practices" are followed, it clearly does not afford meaningful treatment.

This seems particularly clear where no one is being advanced through treatment, and OMH makes no efforts to assure those it treats are returned "to the community as quickly as possible".

Therefore, the decision of the Illinois Court may now be a problem for STARC should the local federal court give deference to the findings made in Illinois.

E. LIVING CONDITIONS

In the case of Kansas v. Hendricks, the U.S. Supreme Court held it could not be said that the civil commitment process and conditions in Kansas violated due process, where there was no evidence the detainees there were:

"subject to "more restrictive conditions (than those) placed on state prisoners", and where they were "essentially the same (as those imposed upon other involuntarily committed mental health patients)."

[Id., 521 U.S. at 363 (1997)]

Clearly the operational conditions residents endure at STARC are not the same as other OMH facilities, and are far more punitive than those at the state's harshest prisons.

Of significant note, residents at STARC are being subjected to extreme forms of censorship: (i) in their communications with others both inside and outside the facility; (ii) with accessing electronically based forms of communications and information; and (iii) in practicing religious beliefs.

This seems to be a clear violation of the U.S. Supreme Court decision in Packington v. North Carolina (2017 U.S. LEXIS 3871), where it was held individuals can not be denied access to online communications simply by virtue of their sex offender status.

As many detainees at STARC may know, based upon the ruling in Packington, New York recently entered into a settlement with sex offenders on parole, and agreed not to impose broad, and overly inclusive bans upon online based data and communications.

Instead, the State can only impose restrictions on those offenders where extenuating circumstances are present.

Said another way, there is now a presumption in favor of allowing access to the internet that can only be restricted on a case-by-case basis. [For example, offender known to possess child pornography can still have access to the internet restricted.]

Whether the courts will find such a presumption extends to parolees and others at STARC is now an open question.

F. GOVERNOR AND LEGISLATIVE OVERSIGHT

As noted above, there is new interest out of the governor's office related to the State's civil commitment practices, and, in particular, with regard to costs, lack of treatment, and staff shortages. The offices' of a couple of state senators also seem to have taken an interest in what is going on at STARC.

As to the extreme understaffing currently plaguing the facility, this problem appears unsustainable, particularly if the state follows through with its plan to civilly commit a large population of homeless people.

Cutting the overtime pay for an already depleted, overworked, and underpaid work force should also put pressure on the State's ability to maintain the politically motivated posture of keeping sex offenders in custody regardless of their low recidivism rates.

Thus, it is likely that pressure will continue to mount, and, hopefully, motivate the State to start discharging those who pose little, if any danger to the community.

G. PEOPLE V. BALCERAK

If residents at STARC are no longer on parole, and pled guilty to their qualifying offense (likely their last sex offense conviction) after April 13, 2007 (the day Article 10 became law), and neither the court or defense counsel informed them that, as a result of the plea, they could be subject to civil commitment proceedings, they are strongly urged to read the case of People v. Balcerak, 161 A.D.3d 764 (2d Dept. 2018).

In short, the Balcerak Court held that where there was a "realistic" possibility of civil management under Article 10 at the time of the plea, criminal defendants must have been advised of such.

If they were not, they can move to withdraw their plea upon the claim it was not knowingly and intelligently made.

Although the process to withdraw a plea via CPL §440 is normally simple, anyone contemplating a 440 motion should proceed cautiously, where the failure to make certain assertions in the motion papers could make it easy for the court to deny the motion.

If successful in having the plea vacated, the Article 10 "Commitment Order" will lose its foundation, and can be immediately lifted. Once that occurs there is a likelihood the offender can pled guilty to "time served" without the state being able to regain jurisdiction under Article 10. [People ex rel. Joseph II v. Superintendent of Southport C.F., 15 N.Y.3d 126 (2010).]

Remember, this only can work if a defendant pled guilty to his "qualifying offense" after April 13, 2007, and is no longer on parole upon pleading guilty anew to time served.

H. FINAL THOUGHTS

Over the years many civil detainees have died waiting to be "treated" and released.

A well liked TA also passed away recently at STARC. Many believe the stress of the work environment and regular mandated 16 hour shifts was a contributing factor in his death.

In any event, OMH practices have left the residents at STARC angry, and frontline staff sleep deprived, overworked, and stressed.

Life is short, and there certainly is a better life for all elsewhere; and no one should have to live (or work) in an environment like the one created at STARC. If you agree, roll up your sleeves, join the fight, learn what your rights are, and advocate for reforms.

I. FOR MORE INFORMATION on the flawed practices and policies at the so called STARC-Oakview Treatment Facility in Marcy, New York, see REPORT (Part One), The Office of Mental Health, Mismanagement and Waste, by Kerry Kotler (Updated & Revised 8/5/22). A copy of the Report is available to anyone sending an email "Request For Report" to: doublek440@gmail.com