

Advocates or Adversaries: Litigation and Lessons Learned

Fulton County Sheriff's Office
Sheriff Patrick "Pat" Labat



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Objectives

1. Gain awareness of federally mandated and funded disability advocacy offices that can enter your correctional facilities at any time they please
2. Partner with legal counsel to avoid litigation related to conditions of confinement
3. Build an effective interdisciplinary team to address conditions of confinement for individuals with mental health conditions



Speaker Introductions

Amelia Michele Joiner

Amelia Michele Joiner is Chief of Staff and General Counsel to the Fulton County Sheriff's Office (FCSO) and Sheriff Patrick "Pat" Labat. Prior to joining the FCSO, Joiner represented the FCSO and other Fulton County justice partners in both transactional and litigation matters, to include inmate death and class action litigation defense. A native of Pittsburgh, Pennsylvania, Joiner's career includes being an associate in two of the largest firms in the country, where she focused her practice in complex litigation and class action defense. Joiner also served as a federal law clerk and as a law professor for over a decade.

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Speaker Introductions

Tracey Elam

Tracey Elam is a Licensed Professional Counselor with a doctorate in Counselor Education and Supervision. She has worked in the areas of substance abuse, adult mental health, child and adolescent therapy, and corrections mental health. Dr. Elam has also taught master's level classes in the areas of ethics and trauma counseling and provided supervision for counselors-in training. She is currently the Health Program Manager for the Fulton County Sheriff's Office, and she has a professional passion for addressing the mental health needs of incarcerated individuals and for maintaining the safety of people in custody.

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Speaker Introductions

Temeka Cherry

Temeka Cherry has served in the law enforcement field for 21 years; she has been employed at the Fulton County Sheriff's Office for 11 of those years with the rank of Deputy Sheriff Lieutenant. She has worked in many areas of the organization, including, assistant facility watch commander, Section commander of the jail medical/mental health unit, section commander of the Grady hospital detention unit, and with providing operations statistical analysis. She is currently the lieutenant assigned to work with incarcerated women at the South Annex. Lt. Cherry is an integral part of the multidisciplinary team that ensures outstanding service provision for incarcerated women who are living with mental health conditions.

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Objective #1

Gain awareness of federally mandated and funded disability advocacy offices that can enter your correctional facilities

Protection and Advocacy Offices

- Established in the 1970s by Congress
- A nationwide system of state-level offices consisting of 57 offices in all US States and territories
- Developmental Disabilities Assistance and Bill of Rights (PADD) Act of 2000, – 42 U.S.C. §15041 et seq. 45 C.F.R. § 1386.19 to 1386.25
- Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act – 42 U.S.C. §10801 et seq. 42 C.F.R. § 51.1 to 51.46
- Protection and Advocacy of Individual Rights (PAIR) – 29 U.S.C. §794e
- Assistive Technology for Individuals with Disabilities (PAAT) – 29 U.S.C. §3012(a)(1)
- Protection and Advocacy for Beneficiaries of Social Security (PABSS), Ticket to Work and Work Incentives Improvement Act of 1999, as amended (TWWIA) 42 U.S.C. § 320b-21
- Protection and Advocacy for Individuals with Traumatic Brain Injury (PATBI) 42 USC § 300d-53
- Protection and Advocacy for Voting Access (PAVA), 42 USC § 15461-1546

Georgia - Georgia Advocacy Office (GAO)



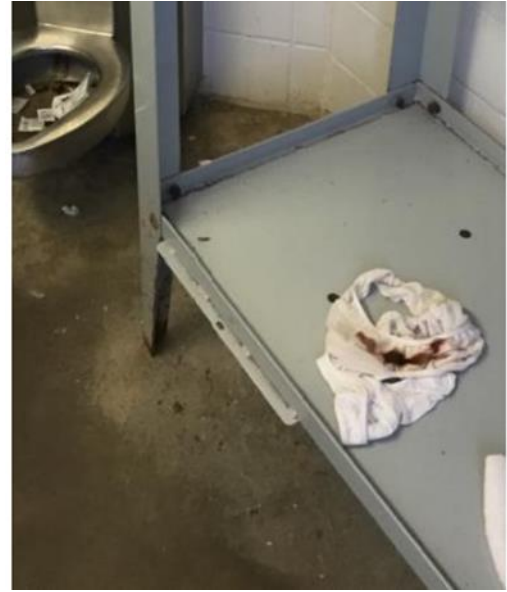
GAO - Who are they?

What do these groups do? By federal law, these groups:

- Required to be independent; they may not be providers of disability services, public and private (including guardianship services)
- Given broad powers to safeguard people's rights, including the right to take legal action, to enter public and private facilities to talk with service recipients, and to make unannounced visits
- Given access to records of a service recipient with the individual's or guardian's consent, as well as when the P&A has probable cause to believe the someone was subject to abuse or neglect (then consent is not required)
- Ability to access abuse and neglect investigations conducted by state investigators and facility investigators
- Authority to investigate abuse and neglect at public and private institutions, facilities, and programs
- Involvement of the general public in the development of their advocacy plans and priorities.







Georgia Advocacy Office (GAO) v. Sheriff Patrick Labat (*Fulton County Jail*)

Who is covered?

- “Experiences a psychiatric disability” - any diagnosed mental disorder currently associated with significant impairment in psychological, cognitive, or behavioral functioning that substantially interferes with the person’s ability to meet the ordinary demands of living
 - Includes, but is not limited to, schizophrenia, bipolar disorder, an unspecified psychotic disorder, major depressive disorder, schizoaffective disorder, or borderline personality disorder;
 - have been identified by Defendant or his agents as having been prescribed psychotropic medication within the preceding twelve (12) months;
 - have entered the custody of the Defendant and evidenced symptoms that would cause the person to be referred to mental health services for evaluation or treatment; and
 - have been assigned housing separate from the general population because their psychiatric disability requires a residential level of care.



Georgia Advocacy Office (GAO) v. Sheriff Patrick Labat (*Fulton County Jail*)

Conditions of Confinement:

- Out-of-Cell Time (OOCT): must be 4 hours per day for 5 days per week
- Includes access to the “yard” or “gymnasium” for recreation time
- If not at least 4 hours of out-of-cell time, then MHP must make contact with the covered person to provide therapeutic activities
- If OOCT is denied for any reason, the specific reason must be documented to include the date, time and reason for denied
- Any denial of OOCT must be reviewed and approved by a Correctional Supervisor
- If the covered person refuses free time for 72 consecutive hours MHP will assess for well-being and refer for a higher level of care as appropriate

Document! Document! Document!



Mental Health Interventions

- Wellness check: *any individual exhibiting behavioral concerns*
- Program participants who decline groups
 - 1:1 counseling
 - Observation of living conditions
 - Lethality
 - Decompensation or psychosis
 - Alternative activities:
 - Therapeutic worksheets that align with the day's group session
- Those who refuse free time for 72 consecutive hours
 - Screened by MHP
 - Behavioral health functioning scale (BHFS) administered
 - Individuals are encouraged to make use of free time



Georgia Advocacy Office (GAO) v. Sheriff Patrick Labat (*Fulton County Jail*)

Out-of-Cell Therapeutic Activities:

- Therapeutic activities offered 5 days per week or 2 hours per day, at minimum
- Activities shall be created by or with the substantial participation of a licensed mental health professional and shall reflect the contemporary standard of care for treating people experiencing psychiatric disabilities.

Document! Document! Document!



Our Interventions: Mental Health

- Implemented a curriculum-based, phased treatment model
 - Phase I: 12 weeks
 - Phase II: 8 weeks
 - Phase III: 8 weeks
- Services provided:
 - included group
 - individual therapy
 - medication management
 - case management
 - discharge planning

Did it work?



Evaluation: Strengths and Weaknesses

There was a limited success with this model. Why?

- Participation was limited to acute cases
- Limited resources for those with less acute mental health issues
- Created instability by the movement of covered persons
- Less individual assessment of inmate
- Requirements for moving inmates between phases caused the appearance of failing to follow court's order



Results of SWOT Analysis

- Implemented a Level system
 - Level 1 = acute
 - Level 2= sub-acute
 - Level 3 = stable (but still not quite ready for general population)
- “Cohorting”
 - Participants remain in the housing unit with others on the same level
 - Less physical movement
 - Dedicated officers/dedicated clinicians
- The goal is to house inmates in the least restrictive and most supportive environments



Programs

- Provides program participants with an opportunity to demonstrate the skills they've learned throughout the week in a social setting
- The three cohorts combine (staged in the gym)
- Participants choose from a variety of activities, including physical activities (basketball, corn hole, walking), art, games, hair styling and fingernail painting
 - Encourages autonomy
 - Enhances decision-making skills



Other Mental Health Interventions



Georgia Advocacy Office (GAO) v. Sheriff Patrick Labat (*Fulton County Jail*)

Other Requirements:

- Compliance monitors – Experts
- Reporting and auditing
- Officer Training
- Mental Health Officer designations
- Personnel stability
- Increased food inspection
- Reading material
- Access to drinking water
- Laundry schedule
- Sweaters and blankets
- Access to toiletries and other sundries

Document! Document! Document!



Objective #2

Partner with legal counsel to avoid litigation related to conditions of confinement

- **DOCUMENT EVERYTHING!**
- Interdisciplinary team to collaborate on discipline and resolutions
- Standard Operating Procedures and Policies related to the discipline of covered persons
- Training for custody and mental health staff to avoid pitfalls
- Create rigorous compliance processes and be flexible with them
- Control the narrative



Objective #3

Build an effective interdisciplinary team to address conditions of confinement

- What are the specific issues?
- Who is on the team?
- What qualifications are needed for team members?
- How do we select team members?
- How do we define success?
- What resources do we need to make this team successful?
- How do we conduct the evaluation?
- Who is responsible for documentation and evaluations?
- How do we sustain our efforts?



The Cost of Litigation: monetary and more

- MONEY
 - Settlement
 - Attorneys' fees
 - Programs
 - MHSU
 - Community Providers
- Human Costs
 - Work environment
 - Retention
 - Reputation
 - Publicity
 - Welfare of detainees
 - Impact on families of those incarcerated
 - Loss of job



Questions?



References

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