RECENT PRISON & JAIL DISABILITY CASES

1. **Mental Health Services and Treatment**
   - *Gates v. Cook*, 376 F.3d 323 (5th Cir. 2004).
   - *Gibson v. County of Washoe*, 290 F.3d 1175 (9th Cir. 2002) cert. denied *sub nom Washoe County, Nevada v. Gibson*, 573 U.S. 1106 (2003).
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   - *Gibson v. County of Washoe*, 290 F.3d 1175 (9th Cir. 2002) cert. denied *sub nom Washoe County, Nevada v. Gibson*, 573 U.S. 1106 (2003).
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5. **ADA. 11th Amendment**
   - *Goodman v. Ray,* 2004 WL 2157192 (11th Cir) and *United States v. Georgia,* cert. granted 2005 WL 608409.
   - *Miller v. King*, 384 F.3d 1248 (11th Cir. 2004) and *Pheiffer v. Columbia River Correctional Institute,* 384 F.3d. 791 (9th Cir. 2004).
   - *Cochran v. Pinchak*, 401 F.3d 184 (3d Cir. 2005).

6. **Protection and advocacy agency access and standing to sue.**
   - *Office of Protection and Advocacy for Persons with Disabilities v. Armstrong*, 266 F.Supp.2d 303 (D. Conn. 2003).
   - *Advocacy Center v. Stalder*, 128 F. Supp. 2d 358 (M.D. La. 1999).
   - *Oregon Advocacy Center v. Mink*, 322 F.3d 1101 (9th Cir. 2003).

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1. Mental Health Services and Treatment

Gates v. Cook, 376 F.3d 323 (5th Cir. 2004).

A Mississippi death row conditions of confinement case in which prisoner claimed that conditions violated the 8th Amendment as cruel and unusual punishment. Complaints included inadequate lighting, lack of pest control, and filthy cell conditions. At least 6 severely psychotic inmates were housed on death row and many more were diagnosed with mental health problems. The psychotic prisoners scream at night, throw feces, and generally make life miserable for other inmates and guards. Mental health services were alleged to be grossly inadequate, with sporadic monitoring of antipsychotics. The trial courts injunction required the prison to comply with ACA and National Commission on Correctional Health Care mental health standards, including private, comprehensive mental health exams on yearly basis, monitor medication and house severely psychotic separately. Appeals court holds that District Court finding of "risk of serious harm to inmates' mental and physical health" are so obvious and pervasive to support the finding of an 8th Amendment violation and the preliminary injunction.

Gibson v. County of Washoe, 290 F.3d 1175 (9th Cir. 2002) cert. denied *sub nom Washoe County, Nevada v. Gibson*, 573 U.S. 1106 (2003).

A detainee with bi-polar disorder died from a heart attack while in custody of the Sheriff. His widow sued under § 1983, claiming due process violations. The trial court granted summary judgment for the defendants. The Court of Appeals remanded in part holding that fact issues existed as to whether the county's policy of delaying medical screening of combative detainees posed a substantial risk of harm to the detainee; whether the county was aware of the risk; and, whether the county's policy of withholding medications created such a risk. Findings of no deliberate indifference and no excessive force were affirmed.

Olen v. Layton Hill Mall, 312 F.3d 1304 (10th Cir. 2002).

A mistaken entry of a credit card expiration date by a clerk at a mall led to the arrest of the innocent plaintiff, who had OCD, for fraudulent credit card use. The almost keystone cops routine that followed led to at least two panic attacks, one in the police car and one in a jail cell, and the police refusal to accept plaintiffs description of his illness and their total lack of familiarity with it anyway. (They recorded it as "CDC" in the booking record.) In addition to 4th Amendment search and excessive force claims, the plaintiffs raised an 8th Amendment claim that defendants knew of and disregarded an excessive risk to the plaintiff's health and safety. The District Court granted summary judgment for defendants on this issue the Court of Appeals reversed, saying it was an issue for the jury.

U.S. v. Sell, 539 U.S. 166, 123 S.Ct. 2174 (2003).

Sell is the latest of several Supreme Court decisions related to the rights of prisoners to refuse treatment with psychiatric drugs. In 1990 in *Washington v. Harper*, the Court recognized a "significant" "liberty interest" in "avoiding the unwanted administration of antipsychotics." However, the court upheld the states right to medicate a defendant against his will as long as an independent decision-maker provides a thorough evaluation of the defendant and as long

as the prisoner is "is dangerous to himself or others and the treatment is in his medical interest. In 1992 in *Riggins v. Nevada*, the Court reversed a state supreme court decision that had upheld the states right to medicate the defendant for his trial, even though the defendant declined the meds and wanted to appear unmedicated before the jury. The Supreme Court reversed and remanded holding that the state was obligated to establish an essential and overriding state interest sufficient to overcome the refusal.

Sell was a former dentist, with a history of mental illness. He was charged with multiple counts of insurance and Medicaid fraud, and late for attempted murder. After a series of contradictory findings, Sell was determined to be incompetent to stand trial and hospitalized. He refused antipsychotics. An administrative Bureau of Prisons hearing followed and eventually a Magistrate ordered the treatment, but found that Sell was not dangerous.

The Supreme Court held that even when the criminal defendant does not pose a danger to himself or others, the government may, subject to limits, forcibly administer psychotropic medication for the sole purpose of rendering the pre-trial detainee competent to stand trial. The medication is permissible if the treatment is medically appropriate, substantially unlikely to have side effects that may undermine the trial's fairness, necessary to further important government trial-related interests, and the LRA. This matrix is limited to use in determining whether to involuntarily medicate a defendant to render him competent to stand trial.

McKune v. Lile, 536 U.S. 24 (2002).

In order to participate in a substance abuse treatment program in a Kansas prison, an inmate was required to sign a form admitting responsibility for the crime of which they had been convicted and another outlining all previous sexual activity, even non-consensual and uncharged. The form were not privilege and could be used in future criminal proceedings. If the prisoner refused to participate, he would lose most privileges and be transferred to a (dangerous) maximum-security unit. The prisoner sued asserting a 5th amendment claim. The District Court and the 10th Circuit agreed. The Supreme Court reversed, holding that the adverse consequences faced by the prisoner for refusing to participate were not so severe as to amount to compelled self-incrimination. It did not, for example, extend his sentence, or affect eligibility for good time credits or parole. Determining what constitutes unconstitutional compulsion, the plurality held, is a question of judgment. Courts must decide whether the consequences are closer to the physical torture which the Constitution prohibits or the de minimus harms which it does not.

The case may have implications for similar non-prison programs.

2. Suicide

Sanville v. McCaughtrey, 266 F.3d 724 (7th Cir. 2001).

Matt Sanville of Wisconsin had serious and multiple mental illnesses. His adult life was characterized by a series of hospitalizations and suicide attempts. During an unmedicated period he was arrested for assaulting his mother. Despite an examination that found him Incompetent to stand trial (his first attorney resigned when his client refused to assent to such a finding) he was allowed to plead no contest and, over the protestations of his mother and even the recommendation of the prosecution, he was given the maximum sentence to state prison. His history in the prison is one of erroneous information and diagnoses. Although he initially agreed to medication, he was taken off when he had appendicitis and apparently refused the meds thereafter, though he asked to see a psychiatrist on several occasions. Bizarre

behavior increased and soon he got into a fight with another inmate and was sent to seclusion. He gave a guard his new will, which referred to his imminent death, told guards he intended to kill self and put toilet paper over the cell openings on the day he killed himself. That day he in his isolation cell, he was left unobserved and unsupervised for 5 hours, he killed himself.

The Court of Appeals held that the inmates medical condition was "objectively, sufficiently serious" for purposes of the claim that he was subjected to cruel and unusual punishment, by being incarcerated under conditions that posed a substantial risk that he would commit suicide. Physicians were found not to be "deliberately indifferent." Claim against the guards, however, survived.

Woodward v. Correctional Medical Services, 368 F.3d 917 (7th Cir. 2004)

Estate of 23 year old pretrial detainee who committed suicide by hanging himself with a bed sheet won a jury verdict of $250,000 plus $1.5 million in punitive damages from Correctional Medical Services (CMS) and its agent health care workers upon a finding of deliberate indifference to the detainee's health and safety. The intake form included the notation "expresses thoughts of killing self." The defendant nurse claims that she was not deliberately indifferent to the detainee's serious mental health needs because she interpreted the note to mean that he had prior rather than current suicidal thoughts. In an opinion on summary judgment the District Court held that the deliberate indifference standard, in the context of a suicide, is described as requiring that a prison official "must be cognizant of the sufficient likelihood that an inmate may imminently seek to take his own life and must fail to take reasonable steps to prevent the inmate from performing this act."

The 7th Circuit affirmed the eventual jury verdict. CMS was the county's contractor for medical and mental health services. CMS had a suicide evaluation policy. However, "despite explicit recognition that the risk of suicide presented a unique and critical problem in a jail, the evidence at trial showed that CMS routinely failed to comply with its own directives on how risks were assessed and monitored." Among other damaging evidence, there was evidence of lax training and of a nurse who was under the influence of drugs.

3. Other medical services

Natale v. Camden County Correctional Facility, 318 F.3d 575 (3d Cir. 2003).

Natale, a diabetic with insulin dependence, was arrested. Before being taken to a NJ correctional facility, he was taken to a hospital for medical clearance. There a doctor gave the him a dose of insulin and a note saying he must be given insulin while incarcerated, although not how often. He was given insulin 21 hours after reception. Released two days later, he suffered a stroke, which he attributed to the failure to give him timely insulin. He filed medical malpractice and section 1983, due process 14th Amendment claims. The District Court dismissed the case granting summary judgment for defendants on the 14th Amendment Claims. The 3d Circuit reversed holding that fact questions precluded summary judgment on the claims of violation of his right to adequate medical care particularly as to whether defendants had been deliberately indifferent to his medical needs.

Lawson v. Dallas County, 286 F.3d 257 (5th Cir. 2002).

Prisoner Lawson is paralyzed from the chest down. Arrested on a parole violation, he was sent to jail. His treating physician called the jail doctor to alert him to dangers of decubitus ulcers, which can be life-threatening and listed the exercises and turning that Lawson needed daily.

An intake nurse objected to his admission, but supervisors overruled her. Inevitably, he got ulcers, was diagnosed, medical orders entered, but not followed because the treatments exceed jail policies. He was transferred to a solitary cell because other inmates complained about the smell of urine and feces. The ulcers advanced from stage II through stages III and IV. At one point he went nine days without a dressing changes. He was finally sent to a hospital where he underwent several difficult and prolonged surgeries. Referring to the familiar standard that deliberate indifference to an inmates medical needs requires actual knowledge and conscious disregard of the risk of harm to the inmate, the court found there was deliberate indifference since the nurses and doctors saw the ulcers, all agreed he needed dressing three times a day and regular meds, a foam mattress, hydrotherapy and turning, but that because of jail policies nurses did not follow the doctor's orders.

4. Restraint, Detention, Segregation

Gibson v. County of Washoe, 290 F.3d 1175 (9th Cir. 2002) cert. denied *sub nom Washoe County, Nevada v. Gibson*, 573 U.S. 1106 (2003).

Hope v. Pelzer, 536 U.S. 730, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002).

In May 1995, Alabama inmate Hope was working on a chain gang on an Interstate Highway when he got into an argument with another inmate. Both inmates were returned to the prison and cuffed to a hitching post, Hope for two hours. About a month later (June 1995), Hope took a nap during the bus ride to the work site, then was less than prompt in getting off the bus when it arrived. An exchange of vulgar remarks between him and a guard led to a wrestling match. Hope was subdued, cuffed and shackled & transported back to the prison, where he was cuffed, shirtless in the sun, standing, arms raised in a stationary position, cuffed to the post – for 7 hours, with no bathroom breaks and water only one or two times, and was taunted by the guards. In a 6-3 decision, defining cruel and unusual punishment as the "unnecessary and wanton infliction of pain," said that among such pain is that which "is totally without penological justification," that in making this determination in the prison context, the court must determine if prison officials acted with deliberate indifference to inmates' health & safety. The Supreme Court held that the 8th Am violations were obvious. The safety concerns at the work site had long since abated, the respondents knowingly subjected Hope to a substantial risk of physical harm, to unnecessary pain, discomfort and humiliation.

Jones'El v. Berge, 164 F.Supp.2d 1096 (W.D. Wis. 2001).

A somewhat older District Court case selected for inclusion on this list because of its importance and the graphic and extensive discussion in the opinion of the conditions and effects of isolation. Level One inmates at Wisconsin's Supermax Correctional Institution spend all but 4 hours a week in their cells, which are illuminated 24 hours a day. They get no outdoor exercise. Possessions may only be one religious text, one box of legal materials, and 25 personal letters. No clocks, radios, watches, TVs etc are allowed. The temperature on the unit fluxuates wildly. Visits other than with attorneys are by video. Hard as they are for most inmates, the extreme social isolation and sensory deprivation can be "devastating" for inmates with serious mental illness who run a high risk of breaking down and attempting suicide.

Court held that plaintiffs had demonstrated a reasonable likelihood of success on the merits on their 8th Amendment claim and a preliminary injunction issued including prohibiting placement of inmates with serious mental illness at Supermax and to evaluate those there.

5. ADA. 11th Amendment

Goodman v. Ray, 2004 WL 2157192 (11th Cir) and *United States v. Georgia,* cert. granted 2005 WL 608409.

Tony Goodman is confined to a wheelchair because of multiple spinal fractures. He is incarcerated in a Georgia state prison in a high/maximum security section of the facility where he is kept in a 12 x 3 feet cell for 23-24 hours a day. The cell is so small he cannot turn his chair around, and cannot access his sink or toilet w/o assistance, which is often denied. He cannot exercise same religious rights, use law library etc., like others inmates. He has suffered physical injury.

The 11th Circuit, relying on its decision in *Miller*, held, in part, that Goodman could proceed under 1883 on his claims that state officials violated his 8th Amen rights. But the court held that his Title II claim was barred by the 11th Amendment, refusing to extend *Lane* to the prison context because Title II "goes well beyond the basic, humane necessities guaranteed by the 8th Amendment." Therefore, the court held, the ADA in the 11th Amendment context, did not meet the requirement of proportionality and congruence. Therefore, Goodman's Title II damages claim was barred by the 111th Amendment.

Miller v. King, 384 F.3d 1248 (11th Cir. 2004) and *Pheiffer v. Columbia River Correctional Institute,* 384 F.3d. 791 (9th Cir. 2004).

Hold just the opposite.

Cochran v. Pinchak, 401 F.3d 184 (3d Cir. 2005).

Same as 11th Circuit, held no valid abrogation.

6. Protection and advocacy agency access and standing to sue.

Office of Protection and Advocacy for Persons with Disabilities v. Armstrong, 266 F.Supp.2d 303 (D. Conn. 2003).

The court, issuing a permanent injunction against the State Department of Corrections, upheld the Connecticut P&A's right under the PAIMI Act to access from the DOC the records relating to the deaths of eight inmates, including seven who committed suicide. In granting access, the court accepted the P&A's determination that the inmates had mental illness (and therefore, were covered under the PAIMI Act), and that the inmates had been subject to abuse and neglect. On the coverage issue, the court found that the P&A need not make a threshold showing of mental illness regarding the inmates before it may access the records. Here the court noted that a number of courts have concluded that evidence that a facility has previously housed individuals with mental illness as well as evidence that some current residents may have mental illness (the P&A submitted ample documentation on this point) is sufficient to merit access. The court also accepted the P&A's argument that the fact that seven of the inmates committed suicide suggests that each had a mental illness, and noted that the DOC's own directives mandated special care for suicidal inmates.

On the question of probable cause, the court rejected the DOC's argument that the P&A should defer its access until after the DOC completed its internal investigation, finding that the P&A's probable cause determination is based on its own monitoring and not that of other agencies. Furthermore the court noted that "it is now a settled principle that the P&A is the

'final arbiter' of probable cause for the purpose of triggering its authority to access all records for any individual that may have been subject to abuse or neglect."

Also, the court found that access was warranted here as the PAIMI Act applies to inmates in the general population of jails and prisons (where the inmates in question were housed), not only those in special mental health units. And, the court found that under Connecticut law, it is clear that the deceased inmates in question could not have had a legal guardian or conservator from whom the P&A was required to seek consent for access to records. The court noted, for instance, that under state law a conservatorship automatically terminates when the subject individual dies.

Advocacy Center v. Stalder, 128 F. Supp. 2d 358 (M.D. La. 1999).

The court held that a correctional center must release to the Louisiana P&A the medical and mental health records of inmates who have consented to the release of their records, notwithstanding state confidentiality requirements restricting such disclosure. Under state statute, regulations and state policy, the records of the Department of Corrections are confidential and must be released first to a court for an *in camera* inspection, and only pursuant to a subpoena.

The court rejected the contention of defendant that access to the records is not necessarily denied but only delayed to ensure confidentiality. First, the court ruled that the state statute in question does not apply where an inmate has consented to the release of his records. Additionally, it was ruled that restricting P&A access to records in this way violates the inmate's constitutional rights to access the courts and the P&A' s First Amendment right to communicate and consult with the population it was created to serve. Moreover, the court found that to the extent the state's policy restricts the P&A's access to treatment records, such policy is preempted by the PAIMI Act.

Finally, the court ruled that the P&A is entitled to recover attorneys' fees, costs and expenses in the action pursuant to the Civil Rights Attorney's Fee Award Act, 42 U.S.C. § 1988, and referred the action to a U.S. Magistrate Judge to determine reasonable attorneys fees.

Oregon Advocacy Center v. Mink, 322 F.3d 1101 (9th Cir. 2003).

Case challenged delays by Oregon mental hospital in accepting mentally incapacitated criminal defendants for evaluation (for restorability) and treatment. Claim due process violations. Defendants spent about a month on average in county jails awaiting transfer to mental hospitals. None of the jails were able to provide treatment. Court held: (1) constituents were same as members, so P&A had associational standing; (2) hospitals' delay in accepting defendants violated substantive due process rights; (3) plaintiffs did not have to prove deliberate indifference. Because individuals had not been convicted the 8th Amendment does not apply, but the 14th Amendment does. Quoting *Youngberg*, "Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish."

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