UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CONNECTICUT TRAUMATIC BRAIN INJURY ASSOCIATION, INC., ET AL	:	CIV. H-90-97 (PCD)
v.	:	
COMMISSIONER, CONNECTICUT DEPARTMENT OF MENTAL HEALTH, ET AL	:	July 28, 1995

FOURTH AMENDED COMPLAINT

I. INTRODUCTION:

1. This action is brought on behalf of all persons who are retarded or who have a traumatic brain injury who have been or may be placed in Norwich or Fairfield Hills Hospitals. The case is also brought on behalf of all persons with traumatic brain injury who are or may be confined at Connecticut Valley Hospital (CVH). This case asks the Court to enjoin the practice of placing and retaining non-dangerous retarded and/or brain injured persons in state hospitals for the mentally ill where the treatment and training they need is unavailable. The plaintiffs contend that these placements are made for the sole purpose of providing custodial care to citizens who have no where else to live. These

practices violate the plaintiffs' rights secured by the Fourteenth Amendment to the United States Constitution, the Rehabilitation Act of 1973, 29 U.S.C. §794 and the ADA, 20 U.S.C. § 12131 et seq. The plaintiffs also contend that classmembers' rights to be free from undue restraint, to receive training sufficient to prevent the deterioration of basic self-care skills, to adequate clothing and medical care and to live in a safe environment guaranteed to them by the Due Process Clause of the Fourteenth Amendment are violated by the defendants' policies and practices. The plaintiffs seek classwide injunctive relief which would halt admissions of retarded or brain injured persons to Norwich Hospital, Connecticut Valley Hospital or Fairfield Hills Hospital and would require that the defendants transfer classmembers to community residential and program settings where their minimum needs can be met.

II. **JURISDICTION:**

2. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343(3) and (4), 2201 and 2202. This action arises under and is authorized by 42 U.S.C. § 1983, 29 U.S.C. § 794 and 42 U.S.C. § 12131.

III. PARTIES:

THE CONNECTICUT TRAUMATIC BRAIN INJURY ASSOCIATION, INC.

3. The Connecticut Traumatic Brain Injury Association, Inc. (CTBIA) is a non-profit corporation created originally in 1982 under the laws of the State of Connecticut with offices at 1800 Silas Deane Highway, Rocky Hill, Connecticut. CTBIA has eleven support groups and 1400 members statewide. The purpose of the Association is to improve the quality of life for persons with Traumatic Brain Injury and their families.

4. Included in the membership of the Connecticut Traumatic Brain Injury Association are parents, family members, guardians and advocates for brain injured persons consigned to Connecticut's public hospitals for the mentally ill, as well as the brain injured persons who are confined or are at risk of being confined in mental health facilities. Membership in CTBIA also includes persons with brain injury and their supporters who are involved in all phases of the rehabilitation continuum.

5. Although created by and for persons with traumatic brain injury, CTBIA has long been aware of the difficulties faced by persons suffering from brain injuries caused by organic and other

non-traumatic causes. In the absence of any state or private agency willing to serve this latter group, CTBIA has made referrals, provided services and advocated for them to improve their quality of life.

6. CTBIA's mission is to provide the support groups and service systems for persons with brain injuries and their families, educate about traumatic brain injury, its related problems and prevention, advocate for community and medical resources needed to provide comprehensive care, and directly meet selected needs that are currently unaddressed by the existing systems.

7. For eight years CTBIA and its local support groups have conducted programs for brain injured persons and have acted as advocates for them. In the face of exclusion of their brain injured family members from generic services in the community, families joined together originally to facilitate and advocate for the development of appropriate public services, and, more recently, to provide community-based residential services directly to brain injured persons to demonstrate the feasibility of providing community-based services for all person with brain injuries.

8. Although persons with brain injury often require services

and support to live and participate in society, they are excluded from services by the Department of Mental Retardation and other agencies receiving substantial state-funding because existing publicly funded services do not adequately meet the needs of persons with Traumatic Brain Injury.

CONNECTICUT ASSOCIATION FOR RETARDED CITIZENS, INC.

9. The Connecticut Association for Retarded Citizens, Inc. (CARC) is a non-profit corporation created in 1951 and which exists under the laws of the State of Connecticut, with offices at 1030 New Britain Avenue, Suite 102-B, West Hartford, Connecticut. CARC has 20 member chapters and a membership of 3000 families statewide. The purpose of the Association is to promote the general welfare of mentally retarded persons in the State of Connecticut.

10. Members of the Connecticut Association for Retarded Citizens include parents, other relatives, guardians and next friends of person segregated at Norwich and Fairfield Hills Hospital and of persons in jeopardy of being segregated there by the State, as well as mentally retarded persons who are presently segregated or in jeopardy of being segregated there.

11. For thirty-nine years CARC and its member chapters have

conducted programs of habilitation for retarded persons and have acted as advocates for them. In the face of exclusion of their children from generic services in the community, parents joined together, originally, to create and provide alternative services through their Association, and more recently, to enforce the duties of the responsible public agencies to provide the education, residential, vocational, recreational, and other opportunities which are as essential to mentally retarded persons as they are to all others.

INDIVIDUAL PLAINTIFFS

12. The plaintiff, Burton Hawley, age 39, has been confined at Fairfield Hills Hospital since April 19, 1982. He brings this action by and through his father and Conservator, Burton Hawley, Sr.

13. Burton became handicapped in 1975 when he sustained a traumatic brain injury in an automobile accident. He was provided medical treatment for those injuries until May 20, 1977, when he was transferred to Connecticut Valley Hospital, a state hospital for the mentally ill.

14. Burton was not then, nor is he now, mentally ill. His

medical condition is not treatable through psychotherapy or the administration of psychotropic medication.

15. Burton and his family were not given notice of this transfer, or provided an opportunity to contest its appropriateness.

16. On or about April 1, 1982 the plaintiff was transferred to Fairfield Hills Hospital, another state hospital for the mentally ill.

17. Once again, neither Burton nor his family were given prior notice of this transfer, or an opportunity to challenge its appropriateness. By his confinement in public mental hospitals, without meaningful opportunity to challenge the placement, the plaintiff has been unfairly stigmatized as a person who is dangerous and is suffering from mental illness.

18. Because the state defendants have offered no alternative support or residential services, Burton has remained in public psychiatric facilities for fifteen years. During these fifteen years of confinement, Burton has been consigned to various locked wards to which his family does not have access. Burton's father and Conservator, Burton Hawley, Sr., has also been denied access to

his son's records.

19. As a result of the lack of appropriate programs and confinement with aggressive clients, Mr. Hawley has been injured, restrained, and has regressed.

20. The state has failed to remedy these unconstitutional conditions despite repeated complaints by his parents.

21. The plaintiff is not mentally ill and cannot obtain the rehabilitation, therapies and programs he needs at Fairfield Hills Hospital.

22. On October 1, 1987, the Newtown Probate Court involuntarily committed plaintiff to Fairfield Hills Hospital, not because of mental illness, dangerousness or need for psychotherapy, but because Burton is brain-damaged, non-ambulatory and the state has developed no appropriate residential settings for him and similarly situated persons.

23. At that hearing the Probate Judge, The Honorable Merlin Fisk, expressed concern and dismay over the fact that under state law, given the lack of appropriate alternatives, he had no alternative but to commit the plaintiff to Fairfield Hills Hospital, regardless of the facility's ability to meet Mr. Hawley's

needs.

24. The plaintiff, Ronald Rotman, is a forty-five year old resident of the Kettle Building, Norwich Hospital, Norwich, Connecticut. Ronald brings this action by and through his brother and next friend, Douglas Rotman.

25. Ronald is not mentally ill. Ronald is retarded, a condition that is not treatable through psychotherapy or the medication therapy that is available at Norwich Hospital. Ronald, instead, needs habilitation to be free from undue restraint, to prevent deterioration of self-care skills, and to be free from harm. Habilitation is, however, unavailable at Norwich Hospital.

26. The plaintiff was admitted to Norwich Hospital on October 8, 1963 from Mansfield Training School as a result of a superintendent's transfer. The plaintiff was given no prior notice of this transfer, or opportunity to be heard. As a result of this transfer and extended confinement in a hospital for the mentally ill, he has been stigmatized as a dangerous mentally ill person.

27. Ronald has remained at Norwich Hospital since October 8, 1963 not because he needs the psychotherapy or confinement offered there, but because the defendants have failed to offer the

appropriate support services necessary for him to leave the facility.

28. During his twenty-nine years of confinement at Norwich Hospital, Ronald has been consigned to various locked wards with nothing to do and nowhere to go. Further, he has been routinely restrained, has regressed and lives in an unsafe environment.

29. On November 4, 1988, and on several prior occasions, the Norwich Probate Court, the Honorable Linda Salafia presiding, involuntarily committed the plaintiff to Norwich Hospital, not because he suffers from mental illness, or because he is dangerous, but because there was nowhere for him in the mental retardation system.

30. Norwich Hospital has recognized since at least 1982 that Ronald should be transferred to an appropriately staffed and supervised community residential setting. He has remained at Norwich Hospital for twenty-nine years, however, because the State has failed to develop an appropriate community residential setting and the support services necessary for him to leave.

31. David Smith is a thirty-two year-old resident of Norwich Hospital. He has lived at Norwich Hospital since June 7, 1984.

32. David brings this action by and through his mother and Conservator, Delores Smith of Wallingford, Connecticut.

33. David sustained a head injury at home on April 16, 1977, and was admitted the following day to Meriden-Wallingford Hospital. Following treatment at several community hospitals, he was discharged to Gaylord Hospital.

34. Following hospitalization in several facilities he was transferred to a nursing home in September of 1979. He was placed in various nursing homes, all of which were incapable of providing appropriate rehabilitative care, until June 7, 1984 when he was admitted to Norwich Hospital after he was discharged from Riverside Health Care Center as a result of a behavioral incident.

35. David was not mentally ill at the time of his admission to Norwich Hospital in September of 1977 and is not mentally ill today. Norwich Hospital recognized long ago that his disability was caused by brain injury. Further, David has never presented behaviors which would pose any danger if appropriate behavior modification was provided.

36. David needs rehabilitation including physical therapy, behavior modification and communication therapy to prevent further

regression, chemical and physical restraint and injury. None of these therapies and programs are available at Norwich Hospital. Although some physical therapy is provided, it is inadequate to meet David's needs. As a result, he has regressed, has been restrained and confined to a locked ward.

37. On June 27, 1984 the Honorable Linda Salafia involuntarily determined that David was incapable and committed him involuntarily to Norwich Hospital even though he was not mentally ill or dangerous. Further, the commitment was made even though Norwich Hospital was incapable of meeting his needs. David's inappropriate and unconstitutional commitment has been reviewed by the Norwich Probate Court and renewed because no appropriate community residential setting was available.

38. David's treatment team has recognized the inappropriateness of Norwich Hospital since his involuntary commitment, and has constantly recommended that he be transferred to a residential placement where the necessary programs are available. The state defendants have not, however, respected or implemented the team's recommendation.

39. Ramona Medina is a thirty-three year-old resident of

Norwich Hospital. She brings this action by and through her sister and next friend, Marilyn Medina, of Hartford, Connecticut.

40. Ramona has lived at Norwich Hospital since March 6, 1981. She is mentally retarded and not mentally ill. She is currently on a "voluntary" placement status even though she is not capable of making an informed choice regarding her treatment or confinement at Norwich Hospital. Although the Departments of Mental Health and Mental Retardation concluded that Ramona should be placed in a properly structured DMR group home several years ago, she has remained at Norwich Hospital because appropriate community placement has not been developed.

41. Ramona is not mentally ill or dangerous, and does not need any of the treatment for mental illness that may be available at Norwich Hospital. Ramona needs habilitation to prevent the unnecessary use of restraint, to prevent regression and to keep her safe. None of these needed programs are, however, available at Norwich Hospital.

42. As a result, Ramona has been subjected to chemical restraint, has regressed, has been stigmatized as a person with mental illness and spends her days on a locked ward with nothing to

do and nowhere to go.

43. Diane Chapman is a forty-four year-old resident of Norwich Hospital. She brings this action by and through her mother and next friend, Mary Chapman, of East Lyme, Connecticut.

44. Diane was first admitted to Norwich Hospital at age eleven, and has lived in that facility continuously ever since, except during another brief inappropriate placement in a nursing home during the period June 24, 1971 through March 8, 1972. She remains at Norwich Hospital on a "voluntary" status even though she is not capable of making an informed choice regarding her treatment or placement at Norwich Hospital.

45. Diane is not mentally ill or dangerous and does not need any of the treatment for mental illness that may be available at Norwich Hospital. Diane needs habilitation to prevent the unnecessary use of restraint, to prevent regression and to keep her safe. None of these needed programs are available at Norwich Hospital.

46. As a result, Diane has been subjected to chemical restraint, has been stigmatized as a mentally ill person, has regressed and is not safe. The professionals at Norwich Hospital

have recognized her need for placement in a structured community setting since 1979, and DMR has been "pursuing" a community placement for her since 1982. She remains confined to a locked ward much of the time and continues to regress while DMR searches for an alternative placement.

47. Joseph Green is a forty-three year-old resident of Fairfield Hills Hospital.

48. Joseph was admitted to Fairfield Hills Hospital on May 13, 1986 for assaultiveness in the family home and for an evaluation. His diagnosis on admission was traumatic brain injury.

49. Joseph is not mentally ill or dangerous and does not need the treatment that is available for mental illness at Fairfield Hills Hospital. Joseph needs rehabilitation and therapy to prevent the unnecessary use of restraint, to prevent regression and to keep him safe. None of these needed therapies or treatments are available at Fairfield Hills Hospital.

50. As a result of his confinement, Joseph has lost skills, has been restrained, has received no effective programming, has lived under unsafe conditions, has been stigmatized as dangerous and mentally ill and has remained at the facility despite the

unanimous judgment of professional and direct care staff that he should be placed in a small community residential setting where appropriate therapy, habilitation, treatment, training and supervision would be available.

51. On or about June 2, 1988 Joseph was involuntarily committed to Fairfield Hills Hospital. This action was taken not because Joseph needed the treatment that was available there, but because there is no appropriate structured and supervised community setting available to him. Joseph remains at Fairfield Hills Hospital only because appropriate residential services and programs have not been developed.

52. Robert Scully, Jr. is a thirty-two year-old resident of Fairfield Hills Hospital. He has lived at Fairfield Hills Hospital since December 22, 1989.

53. Robert brings this action by and through his father and Conservator, Robert Scully, Sr. of Plainville, Connecticut.

54. Robert sustained a head injury as a result of a fall while he was waiting in line to enter the Superior Court in Torrington, Connecticut. He was later admitted to Charlotte Hungerford Hospital, and Hartford Hospital.

55. Following hospitalization he was transferred to a nursing home and then was taken home to live with his family. He lived at home for approximately one year until a placement became available in a group home operated by DATAHR in Danbury, Connecticut. He was committed to Fairfield Hills Hospital some six months later after DATAHR determined that they were unable to meet his needs.

56. On December 15, 1989 the Danbury Probate Court involuntarily committed Robert to Fairfield Hills Hospital without considering that facility's ability to respond to his need for rehabilitation. Immediately after admission the treatment team informed the family that Robert was brain injured and not mentally ill and did not belong at Fairfield Hills Hospital.

57. Robert remains at Fairfield Hills Hospital, however, because an appropriate community residence has not been developed, nor is any being planned.

58. As a result of his confinement and lack of programs Robert has received psychotropic medication without the consent of his conservator, has been confined to a locked ward and is at risk of regressing because the rehabilitation he needs is not available at Fairfield Hills Hospital.

59. The plaintiff, Timothy Kane, is disabled and legally incompetent as a result of a traumatic brain injury that he sustained in an automobile accident in 1978.

60. After the accident, his parents, Mr. and Mrs. William Kane, attempted to meet Timothy's needs in the family home. Because the family received no respite services, no behavior supports, no recreational programming or vocational programs, Timothy began to exhibit behavioral problems of increasing severity.

61. By 1984 his behaviors had become so taxing on the family that they found it necessary to remove him from the home from time to time. Because the state had not assigned any state agency the responsibility for developing small, properly supported community residential settings or community support services for citizens disabled through a brain injury, or their families, and had appropriated inadequate resources for such development, the parents had no alternative but to place Timothy at Norwich Hospital when these behavioral crises occurred.

62. From 1981 through July, 1988, Timothy was admitted to Norwich Hospital on approximately eight occasions due to behaviors

that the family could not manage at home. On these occasions, the family would typically place Timothy in the emergency room of William W. Backus Hospital. Invariably, William W. Backus Hospital would refuse to admit Timothy, but would aggressively pursue a transfer to Norwich Hospital. Following each transfer the family would take Timothy back into the family home.

63. In July, 1988, Timothy was placed in the New Medico Highwatch Rehabilitation Center in New Hampshire for specialized rehabilitation for his brain injury. He remained there until January of 1990 when he returned to the family home.

64. From May 6, 1990 through approximately August 17, 1990, Timothy was admitted to Norwich Hospital, again due to a family crisis precipitated by behaviors they could not manage without assistance. Prior to his discharge on or about August 17, 1990, the parents were assured during a team meeting by the Norwich Hospital staff that they would assist the family if behavioral crises were to develop after Timothy's return home.

65. From August 17, 1990 through November 11, 1990, Timothy lived at home. His behaviors began to escalate, however, in the absence of the behavior supports the defendants had promised. The

family, in turn, rapidly approached the point of total breakdown. By November 12, 1990 the stress on the family had become so great that they had no alternative but to place Timothy in the William W. Backus Hospital emergency room once again.

66. On this occasion William W. Backus Hospital refused to admit Timothy and refused to treat or transfer him to an appropriately supported community residential setting because he suffered from brain injury. The defendant Mullaney, in turn, refused to provide the necessary support services that would enable the plaintiff to receive the treatment he needs or make available a properly supported community residential setting for him.

67. On November 28, 1990, by order of this court, Timothy Kane was admitted to Norwich Hospital over the defendants' objection that such placement was inappropriate because Norwich Hospital could not meet his individual needs.

IV. CLASS ACTION:

68. Plaintiffs Ronald Rotman, Ramona Medina and Diane Chapman bring this action on their own behalf, and on behalf of a subclass consisting of all other persons with retardation who are now or may in the future be placed in Norwich Hospital or Fairfield Hills

Hospital. Plaintiffs seek for themselves and members of the class declaratory and injunctive relief to require the defendants to create community living arrangements and support services necessary to prevent the unnecessary use of restraint, to prevent the loss of skills to ensure their safety and prevent their future confinement in facilities which cannot meet their individual needs.

69. Plaintiffs Burton Hawley, David Smith, Joseph Green and Robert Scully, Jr. bring this action on their own behalf, and on behalf of a subclass consisting of all other persons with brain injury who are now or may in the future be placed in Norwich Hospital, Connecticut Valley Hospital or Fairfield Hills Hospital. Plaintiffs seek for themselves and members of the class declaratory and injunctive relief to require the defendants to create community living arrangements and support services necessary to prevent the unnecessary use of restraint, to prevent the loss of skills to ensure their safety and prevent their future confinement in facilities which cannot meet their individual needs.

70. This is a proper class action under Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure. Each subclass is so numerous as to make the joiner of all members impracticable.

There are substantial questions of law and fact common to both subclasses, and the claims of the plaintiffs are typical of the subclasses and predominate over any questions affecting only individual needs. The named plaintiffs will adequately and fairly represent the interests of the subclasses. A class action is superior to any other available method for the fair and efficient adjudication of the controversy.

V. DEFENDANTS:

71. Defendant, Albert Solnit, M.D. is the Commissioner of the Connecticut Department of Mental Health. As such, he is responsible for:

a) the planning and development of a complete, comprehensive and integrated statewide program for persons residing at Fairfield Hills Hospital, Connecticut Valley Hospital, Norwich Hospital, for other persons admitted to public health facilities and for the implementation of said program;

b) the coordination of the efforts of the Department of Mental Health with other state departments and agencies, municipal governments, and private agencies concerned with and providing services for persons residing at Fairfield Hills Hospital,

Connecticut Valley Hospital and Norwich Hospital;

c) the administration and operation of the institutions for the mentally ill and regional programs;

d) the establishment of standards and policies for the care and treatment of persons living at Fairfield Hills Hospital, Connecticut Valley Hospital and Norwich Hospital, which are consistent with state and federal law.

72. Defendant, Peter O'Meara, is the Commissioner of the Department of Mental Retardation. The Commissioner is responsible for:

a) the planning and development of a complete, comprehensive and integrated statewide program for persons with retardation;

b) the implementation of said program;

c) the coordination of efforts of the Department of Mental Retardation with other state departments and agencies, municipal governments, and private agencies concerned with and providing services for persons with retardation;

d) the administration and operation of the state training schools, regional centers, and all state operated community and residential facilities established for diagnosis, care and training

of persons with retardation;

e) the development of criteria as to the eligibility of any person with retardation for residential care in any public or state supported private institution;

f) after considering the recommendation of a properly designated diagnostic agency, she may assign a person with retardation to a public or state supported private institution. She may transfer such persons from one institution to another when necessary or desirable for their welfare.

73. Defendant, Louis Lippner, is the Superintendent of Fairfield Hills Hospital. Defendant, Garrell S. Mullaney, is the Superintendent of Norwich Hospital. Defendant, Judith Normandin is the Superintendent of Connecticut Valley Hospital. They are responsible for:

a) the operation and administration of Fairfield Hills Hospital, Connecticut Valley Hospital and Norwich Hospital, and for the custody and control of all persons admitted to these hospitals;

b) authorizing transfers into and out of these hospitals;

c) placing any classmember committed or admitted to these hospitals in a private boarding home, or group home or other

residential facility. The superintendent remains responsible for exercising control over the person after the transfer and for exercising power to return such person to the hospital.

74. Defendant, Honorable Linda Salafia, is the Judge of the Norwich Probate Court. Her duties as probate judge, require her to consider involuntary commitment of retarded and brain injured people to Norwich Hospital pursuant to Connecticut General Statutes § 17-178(c) even though Norwich Hospital cannot meet their needs. Although the statute requires her to consider less restrictive alternatives for classmembers, such alternatives are rarely, if ever, available, and she lacks the power under the statute to order the development of alternatives necessary to safeguard classmembers' constitutional rights. As a result, she has been forced to commit brain injured and retarded people to Norwich Hospital simply because there is no other placement for them.

75. Defendant, Honorable Margo S. Hall, is the Judge of the Newtown Probate Court. Her duties as probate judge require her to involuntarily commit retarded and brain injured people to Fairfield Hills Hospital pursuant to Connecticut General Statutes § 17-178(c) even though Fairfield Hills Hospital cannot meet their needs.

Although the statute requires her to consider less restrictive alternatives for classmembers, such alternatives are rarely, if ever, available, and she lacks the power under the statute to order the development of alternatives necessary to safeguard classmembers' constitutional rights. As a result, she has been forced to commit brain injured and retarded people to Fairfield Hills Hospital simply because there is no other placement for them.

76. Persons with retardation and brain injury are consigned to Fairfield Hills, Connecticut Valley Hospital and Norwich Hospitals and are at risk of placement in these facilities because the defendants have failed to develop alternative services for them in the community.

77. Retarded persons and brain injured persons remain at these facilities for the same reasons. Although the care is unconstitutionally deficient and dangerous at Fairfield Hills, Connecticut Valley and Norwich Hospitals, they are forced to rely on these facilities for continuity of care.

78. Plaintiffs spend most of their time behind locked doors in large groups in multi-function rooms, which allow no separation of activities such as would be found in private group homes or

normal work or recreation places. Plaintiffs are not given the opportunity to experience a variety of environments during the day, as are community members.

79. Living and activity space available to classmembers is inadequate in design, insufficient in area, inappropriate in setting and dehumanizing in condition.

80. Staff-resident ratios and staff training are inadequate to provide care or protect classmembers from harm, let alone to evoke development and habilitation or to protect plaintiffs from harm.

81. Clean clothing is frequently not available due in part to grossly inadequate and inefficient laundry facilities and services. Moreover, plaintiffs personal clothing is routinely lost, and plaintiffs are frequently required to wear improperly fitting clothes and underclothes, and sometimes even go entirely without necessary items of clothing. Plaintiffs are deprived of the personal development, comfort and satisfaction that accompany the right to choose among a selection of appropriate, clean, seasonable, and attractive personal clothing and to present an appearance similar to other citizens.

82. Plaintiffs are not provided with the services, stimulation, and attention necessary to prevent deterioration of and injury to their physical condition, psychological well-being and personal development.

83. Defendants have failed to recruit, employ and train direct care and professional personnel in sufficient numbers, and have failed to place personnel in an environment where it is possible to stimulate and assist in the daily life activities to the plaintiffs.

84. Individual habilitation programs for each classmember living at Fairfield Hills, Connecticut Valley and Norwich Hospitals are not provided.

85. Defendants have failed to provide necessary services, including medical and dental services, nursing care, psychological services, behavior modification, physical and occupational therapy, speech pathology and audiology services, recreation, vocational and rehabilitative training.

86. Parents of classmembers are routinely denied access to their disabled family member's file and the disabled person's living space. Such access is necessary to improve the care and

treatment each classmember receives.

87. Defendants have failed to prepare classmembers for or assist them in securing gainful employment.

88. Defendants have failed to provide each classmember an individualized exit plan for placement in a less restrictive integrated community setting.

89. Plaintiffs spend most of their time in day rooms adjoining their communal sleeping quarters without planned activity, often wandering aimlessly or sitting or lying alone, and often without adequate clothing.

90. Physical and pharmaceutical restraint procedures are frequently used for convenient control of classmembers and as a substitute for appropriate care and programs of habilitation.

91. All plaintiffs and members of their class are human beings who have feelings, needs and motivations like other people. They have, to varying degrees, the potential for growth development, and achievement of self-care and self-support. For none of them is placement in a psychiatric institution necessary for their habilitation, treatment or care.

92. The defendants and their professional teams agree that persons with retardation or brain injury should not be placed at a hospital for the mentally ill unless they require treatment for acute mental illness which cannot be provided in less restrictive settings, and present a danger to the disabled person himself or a third person.

93. The defendants and their professional teams also agree that retarded persons who presently live at Norwich Hospital and Fairfield Hills Hospital and persons with brain injuries who live at Norwich, Connecticut Valley and Fairfield Hills Hospitals should be moved into appropriate community settings at the earliest practicable date.

94. The defendants and their professional teams also agree that the habilitation, treatment and therapies retarded and brain injured people need to sustain their present level of functioning and prevent impermissible restrictions on their liberty are unavailable in DMH facilities.

95. The professional judgments of the state teams with respect to community placement are not implemented for brain injured persons and persons with retardation who are not eligible

by statute for DMR services because DMR and DMH claim persons with those disabilities are not eligible for community services.

96. Some class members are not recommended for community services because treating professionals base their judgments on what community services are available rather than what is appropriate.

97. A number of classmembers with brain injuries have recently been transferred out of state psychiatric hospitals to limit the scope of defendants' potential obligation under this lawsuit.

98. Many of these "discharged" classmembers have been placed in settings in which they receive inadequate supervision, and inadequate treatment of behaviors which are sequellae of their brain injuries. These classmembers are placed at risk of harm and/or returning to psychiatric hospitals by reason of the DMH defendants' failure to address needs associated with their brain injuries in the community placement process.

99. In addition, some classmembers have been transferred to "transitional" facilities without planning focusing on community placement following treatment. As a result, some classmembers have

remained in such facilities for an undetermined period awaiting the community placement recommended by their professional teams.

100. Emergency room psychiatrists continue to make emergency commitments of retarded and brain injured persons to Norwich, Connecticut Valley and Fairfield Hills Hospitals and the defendants continue to admit these persons even though they know or should know that the disabled person's needs are ill served by such admissions.

101. Many classmembers are retained in public psychiatric facilities on a "voluntary" status even though the defendants know or should know that retarded and brain injured persons are not capable of making informed choices about placement in such facilities, especially in light of the fact that no alternatives are presented.

102. Probate Courts, particularly those in Newtown, Middletown and Norwich continue to involuntarily commit retarded and brain injured persons to Norwich, Connecticut Valley and Fairfield Hills Hospitals pursuant to Connecticut General Statutes Section 17-178(c), knowing full well that these facilities can't meet the patients' basic needs. These involuntary commitments amount to a

lifetime consignment to a hospital for the mentally ill.

103. Monetary damages and other remedies at law are inadequate. Plaintiffs and members of the plaintiff class have been and will continue to be irreparably harmed by the defendants' conduct described above.

VI. CLAIMS:

COUNT I

104. The defendants' failure to follow and implement the recommendations of their own treatment teams relating to the need to remove class members from public psychiatric facilities and place them in small community based settings has deprived class members of their rights secured by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution.

COUNT II

105. The defendants' failure to recommend the placement of some classmembers into community residential settings because of the unavailability of proper community services for those individuals violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

COUNT III

106. The defendants' failure to recommend community placement and to place persons with brain injury or retardation not served by DMR into community settings violates 29 U.S.C. § 794.

COUNT IV

107. The defendants' failure to recommend community placement and develop such placements for persons with retardation or brain injury violates 42 U.S.C. § 12131 et seq.

COUNT V

108. The acts and omissions of the defendants deny the plaintiffs, and members of the plaintiff class, their rights to freedom from harm, freedom from restraint, adequate shelter, clothing, medical care and the training necessary to preserve skills and secure the other substantive rights protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

COUNT VI

109. The transfer of classmembers to facilities which cannot meet their individual needs relating to brain injury to avoid the obligations imposed by the Constitution and federal laws violates

the Due Process Clause, 29 U.S.C. § 794 and the Americans with Disabilities Act, 42 U.S.C. § 12131

COUNT VII

110. The acts and omissions of the defendants have deprived plaintiffs of their rights to meaningful notice and a hearing 1) before they are "voluntarily" consigned to state psychiatric facilities even though they are incapable of making informed choices, 2) before behavior modifying medication and restraint are used to control them and 3) before they are administratively transferred to state psychiatric facilities in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

COUNT VIII

111. The defendants' use of the commitment procedures contained in Section 17-178 of the Connecticut General Statutes to involuntarily and indefinitely confine brain injured and retarded persons to psychiatric facilities which cannot meet their treatment needs violates plaintiffs' rights secured by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, 29 U.S.C. § 794 and 42 U.S.C. § 12131.

112. Connecticut General Statutes Section 17-178 is unconstitutional on its face in that it is inconsistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution to the extent it authorizes the indefinite involuntary commitment of non-dangerous retarded and brain injured persons to psychiatric facilities without regard to the habilitative and rehabilitative needs of such persons.

COUNT IX

113. Connecticut General Statutes Section 17-206d violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution to the extent it authorizes and is interpreted as permitting the administration of psychotropic medication and restraint without informed consent.

VII. RELIEF:

WHEREFORE, the plaintiffs respectfully request that this Court:

1. Permanently enjoin defendants to provide each plaintiff and each classmember, including, but not limited to, classmembers at FHH, NH and CVH as well as classmembers who have been "discharged" from these state hospitals, with a placement in a

small (six disabled residents or fewer) community setting with appropriate support services and/or such other treatment as is necessary to protect him/her from harm, prevent the unnecessary use of restraint, and provide adequate clothing, shelter, medical care and training to restore the classmembers' preexisting skills and prevent further regression.

2. Permanently enjoin the defendants from admitting retarded or brain injured persons to public psychiatric hospitals unless such admission is necessary to address the needs of classmembers who are dangerous by reason of acute mental illness.

3. Permanently enjoin the defendants to place class members with brain injuries or retardation (but not served by DMR) with the same priority as persons who are statutorily eligible for services from DMR and DMH.

4. Permanently enjoin the defendants to make professional judgments about the placement of classmembers out of psychiatric facilities based on individual need rather than on availability of resources.

5. Enter a preliminary injunction requiring the defendants to develop and submit for court approval appropriate short and long

term treatment and placement plans for the plaintiff Timothy Kane.

6. Declare Connecticut General Statutes Section 17-178 unconstitutional on its face to the extent it authorizes the indefinite involuntary commitment of persons with retardation or brain injury to public mental health facilities without regard to their habilitative and rehabilitative needs.

7. Declare Connecticut General Statutes Section 17-178 unconstitutional as applied to the extent probate courts and defendants have interpreted it as permitting the indefinite involuntary commitment of persons with retardation or brain injury to public mental health facilities without regard to their habilitative and rehabilitative needs.

8. Declare Connecticut General Statutes Section 17-206d unconstitutional to the extent it authorizes the administration of psychotropic medication and restraint without informed consent.

9. Enjoin the defendants from involuntarily committing classmembers to Norwich, Connecticut Valley and Fairfield Hills Hospitals unless those classmembers are dangerous by reason of acute mental illness and that the facility has the capacity to respond to the classmembers' habilitative and rehabilitative needs.

10. Permanently enjoin the defendants from admitting retarded or brain injured persons to public psychiatric facilities on a voluntary basis or using mechanical restraint, placement in locked facilities, or behavior modifying medications to control them without prior notice or an opportunity to be heard.

11. Permanently enjoin state defendants to make available in advance of any transfers the necessary alternative community residential programs and services necessary to preserve and protect plaintiffs' constitutional rights.

12. Permanently enjoin the state defendants to develop written individualized habilitation and exit plans for each classmember and to provide habilitation for each.

13. Certify the plaintiff class as defined in Section IV of this Complaint.

14. Award plaintiffs costs and attorneys' fees.

15. Award plaintiffs and members of the plaintiff class such other relief as is necessary to establish their rights secured by

the Fourteenth Amendment.

Respectfully submitted,
Plaintiff Class,

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