June 8, 2022

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Dear Commissioner Slatton-Hodges, Mr. Corbett & Chief Gourley:

We write on behalf of the hundreds of individuals with mental illness in Oklahoma County who are unable to access the community services they need and, as a result, are unnecessarily hospitalized and/or incarcerated. As discussed in more detail below, the State's reliance on these segregated settings and failure to ensure non-discriminatory responses to persons in crisis violates federal law. We request the opportunity to meet with you to resolve this matter amicably and without the need for formal legal action.

Oklahoma Disability Law Center, Inc. (ODLC) is the entity authorized under the Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. § 10801 *et seq*., to provide legal and other advocacy services to persons with mental illness in Oklahoma. The Center for Public Representation (CPR) is a public interest law firm with offices in Massachusetts and Washington, D.C. The

American Civil Liberties Union of Oklahoma Foundation (ACLU OK) is a nonprofit, non-partisan, privately funded organization devoted exclusively to the defense and promotion of the individual rights secured by the U.S. and Oklahoma constitutions. Covington & Burling is an international law firm with a strong commitment to public service. For the past year, we have reviewed documents and interviewed knowledgeable persons regarding the provision of community-based mental health services in Oklahoma County. Based on this information, we conclude that the State does not provide mental health services in the most integrated setting appropriate, a failure that discriminates against persons with mental illness in violation of the Americans with Disabilities Act (ADA),[1] and Section 504 of the Rehabilitation Act of 1973.[2] In addition, the Oklahoma City Police Department's policies and practices regarding how it responds to persons with mental illness in crisis are discriminatory in violation of the ADA and Section 504. We raise these issues in the hope that discussions with you will result in prompt improvements in services for persons with mental illness in Oklahoma County without the time and expense of litigation.

A. Oklahoma's Failure to Provide Adequate Community Mental Health Services Causes Unnecessary Segregation and Harms Persons with Mental Illness.

While the State, through its Department of Mental Health and Substance Abuse Services (ODMHSAS), does provide some community-based mental health services in Oklahoma County, the amount and type of those services is woefully inadequate to meet the needs of persons with mental illness and prevent their unnecessary segregation. This lack of appropriate community services means that institutional facilities, such as Griffin Memorial Hospital, the Oklahoma County Detention Center (OCDC), local hospitals and emergency rooms, as well as the Oklahoma County Crisis Intervention Center and the Oklahoma Crisis Recovery Unit, have become the initial and/or primary places where many people with mental illness are sent, even though they would benefit from mental health treatment in alternative placements that are more integrated into the community. Individuals continue to cycle in and out of these facilities due to the absence of sufficient and appropriate crisis services, diversion options, long-term community supports, re-entry planning, and other necessary services. As a result, persons with mental illness in Oklahoma County are subject to repeated and unnecessary

[1] 42 U.S.C. § 12132.

[2] 29 U.S.C. § 794(a).

segregation in violation of the ADA, Section 504, and the United States Supreme Court's decision in *Olmstead v. L.C.*[3]

The lack of adequate crisis services is a striking example of the deficiencies in the State's mental health system. Given its population and size, Oklahoma County should operate, at a minimum, several mobile crisis teams available 24 hours per day, seven days per week, [4] and each team should include, at a minimum, one licensed therapist, one case manager, and one peer support recovery specialist. Instead, the County's mobile crisis service, which is run by NorthCare, has only eight staff total (three licensed therapists, four case managers, and one peer support recovery specialist) to provide crisis services for all adults in both Oklahoma and Logan Counties, and such services are provided only during the hours of 11 PM to 7 AM. In addition, this limited mobile crisis staff are also responsible for providing assistance via telehealth to law enforcement officers and other first responders who use tablets to facilitate interventions with people they encounter who appear to be in crisis.

This failure to provide appropriate mobile crisis services as early as possible has a negative effect on the entire system. For example, the 32 crisis beds currently available at the Oklahoma County Crisis Intervention Center and the Oklahoma Crisis Recovery Unit[5] are nearly always full, requiring individuals needing services to be transported to other facilities farther away from their homes, families, and friends. In addition, instead of providing community-based crisis services using trained mental health clinicians and professionals – an evidence-based practice shown to be effective in preventing unnecessary hospitalizations – Oklahoma County relies heavily on law enforcement personnel to respond to crises. For example, according to information provided in response to an Open Records Act request, the Oklahoma City Police Department responded to over 1,500 mental health crisis calls each month over the past calendar year. A fully functional and staffed mobile crisis system would reduce both the number of interactions between the police and persons with mental illness, as well as the likelihood of harmful – and even fatal – events that too often happen when police are primary responders. This practice of using police officers to respond to persons

[3] 527 U.S. 581 (1999).

[4] According to a crisis resource need calculator created by the federal Substance Abuse and Mental Health Services Administration (SAMHSA), a county the size of Oklahoma County should have roughly seven mobile crisis teams. *See* SAMHSA, *National Guidelines for Behavioral Health Crisis Care: Best Practice Toolkit*, at 42–44 (2020), https://www.samhsa.gov/sites/default/files/national-guidelines-for-behavioral-health-crisis-care-02242020.pdf.

[5] According to the SAMHSA crisis resource need calculator, Oklahoma County should have roughly 41 crisis beds. *See National Guidelines for Behavioral Health Crisis Care: Best Practice Toolkit*, *supra*, at 44, https://www.samhsa.gov/sites/default/files/national-guidelines-for-behavioral-health-crisis-care-02242020.pdf.

in mental health crisis is ineffective, not clinically appropriate, and discriminatory in violation of the ADA and Section 504.

Another significant gap in the Oklahoma County community mental health system is the lack of appropriate housing options, including a lack of permanent supported housing. Each year, homeless services providers conduct a "point in time" survey of people who are experiencing homelessness in Oklahoma City, the largest and most populous component of Oklahoma County. The survey includes people living in emergency shelters, transitional housing, or living outdoors, but it does not count people who are temporarily housed in hotels, treatment facilities, emergency rooms or jails. The most recent survey took place on March 3, 2022. The survey identified 1,339 people experiencing homelessness in Oklahoma City, although that count may be low because the survey took place on a warm day when fewer people were congregating in shelters.[6] Of those 1,339 people, 473 were identified as "chronically homeless"[7] and 378 people had a serious mental illness (42 percent of whom were living outdoors).[8]

At the time of the March 2022 survey, Oklahoma City, had 1,014 available permanent supported housing beds. This number misrepresents the actual ability of a person with serious mental illness to access supported housing, because 385 of those beds are reserved for participants in the Veterans' Affairs Supportive Housing Program.[9] Of the remaining beds, 290 are available only to chronically homeless persons or persons with serious mental illness. On March 2, 2022, 268 of those 290 beds were occupied.[10]

Supported housing typically includes both a rental subsidy and services to support an individual's successful tenancy. Such support services can include case management, independent living skills training, medication management, and home health aides. Assistance finding and securing housing should also be available. Despite the clear need for this vital, evidence-based service, and the benefits it would provide to persons with serious mental illness, the State fails to

[6] *See* Oklahoma City Homeless Services, *OKC Point in Time 2022: Snapshot of Homelessness*, at 10 (2022). https://www.okc.gov/home/showpublisheddocument/28408/637896687181583850.

[7] "Chronically homeless" is defined to include an unaccompanied homeless person with a disabling condition, or a family with a disabled adult head-of-household who has either been continuously homeless for a year, or at least four times in the past three years with a combined total of at least 12 months of homelessness. *Id.* at 12.

[8] *Id*. at 14.

[9] *Id*. at 16.

[10] *Id*. at 16.

ensure that permanent supported housing is available in amounts anywhere near the quantity needed.

This lack of appropriate services causes the unnecessary and harmful incarceration of persons with serious mental illness at OCDC, among other negative outcomes. A large county jail, like OCDC, is the least therapeutically effective and financially efficient location to provide mental health services. Yet, the absence of even minimally adequate community-based services, including pre-incarceration diversion services for persons with serious mental illness arrested on low-level charges, ensures that large numbers of persons needing treatment for mental illness unnecessarily end up in an institution least likely to provide it.

A disproportionately large number of persons with mental illness are incarcerated at OCDC, and such incarceration often happens repeatedly. According to information provided by the Oklahoma County Jail Trust, for example, for the week ending February 4, 2022, approximately 44 percent of detainees (725 persons) at OCDC received psychiatric medications, and 39 percent of detainees (643 persons) were seen by a psychiatric nurse, nurse practitioner, or psychiatrist.[11] In addition, over the past three years, 1,159 people have been booked into OCDC six or more times, and 32 have been booked 20 times or more. ODMHSAS cross-referenced this list of persons with their treatment records and determined that 67 percent of the highest jail utilizers had, at some point, received behavioral health services through ODMHSAS, but 72 percent of those had not received ODMHSAS services in the past year.[12] These statistics, along with the data on the dearth of community mental health services, show that adequate and appropriate mental health services could prevent the unnecessary institutionalization of many individuals with serious mental illness.

The lack of community-based services and unnecessary institutionalization described above violates federal law (see Section C, below) and causes significant harm to persons with serious mental illness. The negative effects of such segregation are both individual and systemic. As the United States Supreme Court made clear in *Olmstead v. L. C.*, segregation "perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life" and "severely diminishes the everyday life activities of

[11] According to the Jail Trust, on February 7, 2022, OCDC held 1,649 detainees. *See* Oklahoma County, *Criminal Justice Authority Regular Meeting*, YouTube (Feb. 7, 2022), https://www.youtube.com/watch?v=5qmluMQxlXg.

[12] Nisha Wilson, Chief Clinical Strategy Officer, ODMHSAS, PowerPoint Presentation Titled "Oklahoma County Jail Frequently Incarcerated Population," Delivered at Oklahoma County Criminal Justice Advisory Council (August 13, 2021).

individuals, including family relations, social contacts, work options, [and] economic independence."[13]

B. Examples of Persons Harmed By Unnecessary Segregation as a Result of Inadequate Community Services.

The following are examples of ODLC constituents who have not received appropriate community-based mental health services and, as a result, have been subjected to unnecessary segregation, such as involuntary commitment, or incarceration.

Constituent 1 is a 27-year-old woman who has a lengthy history of medical and behavioral health concerns dating back to her childhood and teenage years, including major depressive disorder, bipolar disorder, multiple suicide attempts, and chronic substance abuse. In January and February 2021, Constituent 1's mental health began to deteriorate significantly. She was homeless for extended periods of time and was twice involuntarily committed to psychiatric facilities under emergency orders of detention.

Constituent 1 was charged in March 2021 with a nonviolent felony in Oklahoma County. On March 8, she was released from a different county jail on a medical personal recognizance bond that required her to enter inpatient treatment for 90 days at a private psychiatric hospital. At no time during this process were community-based mental health services discussed or offered as an option for Constituent 1.

Later in 2021, Constituent 1 was subject to an emergency order of detention in Oklahoma County and sent to a community mental health center (CMHC) in Norman. Constituent 1 was discharged because of a lack of available beds on a Thursday and told to go to a CMHC in Oklahoma City the following Monday. Although Constituent 1 qualified for and could have benefited from effective community-based services, none were discussed with or offered to her.

Constituent 1 was arrested again in September 2021 for a non-violent offense, and in January 2022, she pled guilty and accepted a seven-year deferred sentence.

[13] 527 U.S. at 600-01.

Thus, despite having significant mental health issues throughout 2021, as well as interactions with both the mental health and criminal justice systems, Constituent 1 was unable to obtain appropriate and effective community mental health services and, instead, was needlessly hospitalized, arrested, and incarcerated multiple times.

Constituent 1 has sought assistance with mental health treatment from non-law enforcement sources. Because of a lack of available community alternatives, she was forced to seek treatment multiple times at hospital emergency rooms. Each time, she was admitted briefly, but discharged before being stabilized. The last time Constituent 1 presented at a hospital, in August 2021, she was sent to a crisis center and eventually involuntarily committed to a psychiatric hospital. However, due to a lack of bed space, she was released to the street – with no discharge plan or appropriate referral for services – where she remained for 15 days before being arrested and incarcerated in the OCDC.

Constituent 2 is a 57-year-old woman with mental illness. In December 2021, Constituent 2 went to the Oklahoma County Courthouse and became confrontational and threatening with Sheriff's Office deputies who were present as courthouse security. A courthouse employee contacted ODLC because they were concerned that Constituent 2 would be arrested due to her erratic behavior. After calling NorthCare's crisis response number and navigating a computerized menu, ODLC received a recorded message stating that nobody was available to answer the call. The recording further suggested that if the caller was experiencing a crisis, they could present themselves physically at the NorthCare office or call the police. Constituent 2 remains unable to obtain effective and appropriate community-based treatment, including crisis services when necessary, and thus continues to be at risk of unnecessary hospitalization and/or incarceration.

Constituent 3 is a 29-year-old man with a diagnosis of major depression with psychotic features and seizures. Due to his seizures, he is not permitted to drive and requires constant supervision. Constituent 3 has no source of income and lives with his family.

In 2021 and early 2022, Constituent 3 was receiving PACT services from Red Rock Behavioral Health Services ("Red Rock") in Oklahoma City. His services were supposed to include case management, medication management, crisis response, and counseling. However, according to his family, the only service the PACT team provided was medication management.

In January 2022, Red Rock changed Constituent 3's medication. After the new medication was administered, Constituent 3's psychotic symptoms dramatically increased. His family made multiple calls to the PACT team telling them about Constituent 3's worsening condition. They reported he was hearing voices to kill a family member, only to be told "they [the PACT team] are meeting about it." The family filed a complaint with Red Rock about the PACT team's inadequate response, but the situation did not improve.

In late January 2022, Constituent 3 drove away in a family member's car. Constituent 3 later called a family member and asked that they come get him. When the family member found him, he was out of the car trying to chase down a woman who was riding her bike along the side of the road. He had also tried to break into some abandoned buildings. Once his family member was able to calm him, Constituent 3 said that he had been hearing voices telling him to hurt his father. After a time, Constituent 3 again became agitated, and the family member called 911 and requested assistance from the OCPD. The family member did not call the PACT team due to the team's previous lack of appropriate responses, and they believed that their only alternative was to seek police intervention by calling 911.

An OCPD CIT officer responded to the call and took Constituent 3 to the Oklahoma County Crisis Intervention Center. He was evaluated and determined to be in need of an inpatient stay. Neither the Crisis Intervention Center nor the Oklahoma Crisis Recovery Unit had bed space for him, however, so the OCPD was asked to transport Constituent 3 to Red Rock's Crisis Center in Norman.

The OCPD did not send a CIT officer for the transport. The OCPD officer who responded placed Constituent 3 in handcuffs. On the drive to Norman, Constituent 3 became agitated, and, during a struggle while the police officer tried to restrain him, Constituent 3 hit the officer. At that point, rather than take Constituent 3 to the Red Rock Crisis Center for treatment, the officer arrested him and transported him to the Detention Center.

While at the Detention Center, Constituent 3 was physically assaulted and injured. After one night on suicide watch, he was put in a general population cell without further mental health follow up or evaluation. He remained incarcerated for approximately 15 days.

His family reached out to ODMHSAS for help finding services that could be put in place upon Constituent 3's release from jail. ODMHSAS did not recommend NorthCare or any other community mental health center because their services would be essentially the same as the ineffective services Red Rock had previously provided. Instead of recommending that Constituent 3 obtain services from its public mental health system, ODMHSAS referred the family to private providers.

Constituent 3's family continues to struggle to find him appropriate community-based mental health care. In early May, he spent four days at Red Rock's Crisis Center in Norman, then was discharged without a transition or follow-up plan and without any medications. In mid-May, a neighbor concerned about Constituent 3's actions called the police, who took Constituent 3 to the hospital because he appeared to be injured. After being brought home, Constituent 3 had an altercation with the police, who then arrested him and took him to the Detention Center. He now faces several charges, including resisting arrest.

C. Federal Law Requires the State to Develop Integrated Community Services to Avoid the Unnecessary Segregation of People with Mental Illness.

The State's failure to develop the integrated community-based services that Oklahoma County residents with serious mental illness both want and are qualified to receive violates the ADA and the Rehabilitation Act. As Congress recognized in enacting the ADA, "society has tended to isolate and segregate individuals with disabilities and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem."[14] Congress further noted that "discrimination against individuals with disabilities persists in such critical areas as ... institutionalization."[15] The ADA was intended to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."[16]

Pursuant to Title II of the ADA, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."[17] Oklahoma County residents with serious

[14] 42 U.S.C. § 1210l(a)(2).

[15] *Id.* § 12101(a)(3).

[16] *Id.* § 1210l(b)(l).

[17] *Id.* § 12132.

mental illness are "qualified individuals with disabilities"[18] and the State of Oklahoma is a "public entity."[19]

Congress authorized the Department of Justice to issue regulations implementing the ADA's non-discrimination requirements. One of these regulations, known as the "integration mandate," requires Oklahoma, as a public entity, to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities."[20] In interpreting this provision and others, the Supreme Court held that the unnecessary institutionalization of individuals with mental disabilities is discrimination under Title II of the ADA. According to the Court:

> [U]nder Title II of the ADA, States are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities.[21]

Similarly, a state violates Section 504 of the Rehabilitation Act when, as a recipient of federal funds, it fails to "administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons."[22] Numerous courts have held that the ADA and Section 504 are to be interpreted to impose similar integration obligations on state entities,[23] and thus both statutes require Oklahoma to stop needlessly segregating persons with mental illness.

The integration mandate applies not only to people who are currently institutionalized, but also to those who are at serious risk of institutionalization.[24] As the Tenth Circuit reasoned, the integration mandate "would be meaningless if

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[18] *Id.* § 12131(2).

[19] *Id.* § 12131(1).

[20] 28 C.F.R. § 35.130(d).

[21] *Olmstead*, 527 U.S. at 607.

[22] 28 C.F.R. 41.51(d).

[23] *See, e.g., Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175, 1179-84 & n.3 (10th Cir. 2003).

[24] *See Steimel v. Wernert*, 823 F.3d 902, 913-14 (7th Cir. 2016); *Davis v. Shah*, 821 F.3d 231, 263 (2d Cir. 2016); *Pashby v. Delia*, 709 F.3d 307, 321–22 (4th Cir. 2013); *M.R. v. Dreyfus*, 663 F.3d 1100, 1115–18 (9th Cir. 2011), *opinion amended and superseded on denial of reh'g*, 697 F.3d 706 (9th Cir. 2012); *United States v. Mississippi*, 400 F. Supp. 3d 546, 553–55 (S.D. Miss. 2019).

plaintiffs were required to segregate themselves by entering an institution before they could challenge an allegedly discriminatory law or policy that threatens to force them into segregated isolation."[25] In addition, a state's failure to provide community services may create a serious risk of institutionalization.[26]

As discussed in detail above, Oklahoma and ODMHSAS violate the ADA and Section 504 by failing to provide services to qualified Oklahoma County residents with mental health disabilities in the most integrated setting appropriate to their needs. Because of a lack of community-based treatment, supports, and services, these individuals experience, or are at serious risk of experiencing, unnecessary and repeated emergency room visits, admissions to local psychiatric facilities, and/or longer-term placements at state facilities, such as Griffin Memorial Hospital. In addition, many of these same people are often homeless and/or needlessly and repeatedly incarcerated due to their inability to access community-based mental health services.

Such needless and repeated cycling among psychiatric facilities, homelessness, and incarceration is "the hallmark of a failed system,"[27] violates federal law, and causes significant harm to Oklahoma County residents with mental illness. Oklahoma's policies and practices regarding the operation of its mental health services system results in the unnecessary confinement and segregation of Oklahoma County residents with serious mental illness in order to receive treatment, supports, and services that should be available to them in the community. The State must remedy the harmful and illegal practices in the most expeditious and efficient way possible.

D. Remedies

In an effort to promote the resolution of these issues without litigation, and to more quickly address the urgent needs of individuals with mental illness, we request that the State take immediate action to reduce its reliance on segregated settings and expand the type and amount of community-based services available to persons with mental illness in Oklahoma County. Specifically, the State must make

[25] *Fisher*, 335 F.3d at 1181. *See also Pitts v. Greenstein*, 2011 WL 1897552, *3 (M.D. La. May 18, 2011) ("A State's program violates the ADA's integration mandate if it creates the *risk* of segregation; neither present nor inevitable segregation is required.") (emphasis in original).

[26] *See Pashby*, 709 F.3d at 322; *Mississippi*, 400 F. Supp. 3d at 553, 576-79 (upholding plaintiff's *Olmstead* claim that when people with serious mental illness are discharged from state psychiatric hospitals, the State's "ongoing lack of community-based services means they are at serious risk of re-institutionalization").

[27] *Mississippi*, 400 F.3d at 555 (internal quotation marks and citation omitted).

a measurable commitment to provide appropriate, integrated community-based services to allow these individuals to receive the treatment they need without being subjected to unnecessary segregation or being placed at risk of such segregation, incarceration, or homelessness.

We are interested in discussing with you the specific steps that the State can take to implement this commitment and to remedy its ongoing violation of federal law. We believe that, at a minimum, Oklahoma must create and/or expand access to affordable community-based mental health counseling and therapy, mobile crisis intervention services and related crisis apartments, Programs of Assertive Community Treatment teams, scattered-site supported housing, peer support services, and supported employment programs in Oklahoma County. Doing so will provide all qualified individuals with mental illness the treatment and supports they need to end the harmful and costly cycle of unnecessary segregation, hospitalization, and incarceration.

E. Conclusion

The mental health services system in Oklahoma County fails to provide sufficient community-based services to individuals with mental disabilities, and, as a result, people do not receive services and are unnecessarily institutionalized, or are placed at serious risk of such institutionalization in violation of federal law.

We are available to meet with you to discuss these issues and begin developing a plan of action. We know that the State shares many of our goals, and we sincerely hope that we can reach a mutually satisfactory agreement without the need to involve the judicial system. We ask that you respond to this letter within two weeks, and look forward to your response.

Very truly yours,

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