United States General Accounting Office

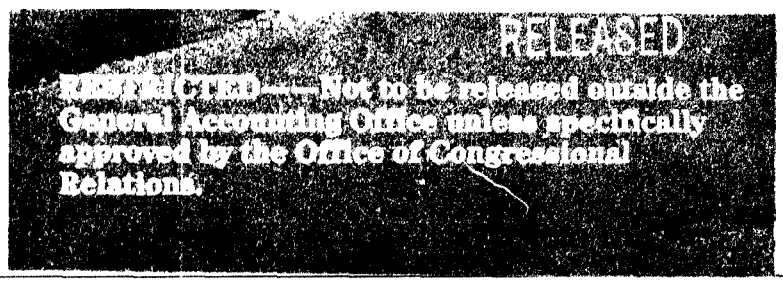
GAO

Report to Congressional Requesters

April 1991

MENTALLY ILL INMATES

Better Data Would Help Determine Protection and Advocacy Needs



GAO/GGD-91-35

GAO

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-242958

April 17, 1991

The Honorable Tom Harkin, Chairman
Subcommittee on Disability Policy
Committee on Labor and Human Resources
United States Senate

The Honorable Henry A. Waxman, Chairman
Subcommittee on Health and the Environment
Committee on Energy and Commerce
House of Representatives

This report responds to your request that we review the coverage of inmates in correctional facilities under the Protection and Advocacy for Mentally Ill Individuals Act of 1986 as amended, which is scheduled for reauthorization in 1991. Specifically, you asked us to determine (1) the extent to which mentally ill individuals in correctional facilities are subject to abuse and neglect, as defined by the Act; and (2) whether all mentally ill individuals in correctional facilities are covered by the Act. The other areas you asked us about—the availability of alternatives to imprisonment, the adequacy of in-prison mental health care, and the availability of after-prison care for federal mentally ill prisoners—will be addressed in a separate report.

Background

According to the Bureau of Justice Statistics, our nation's prisons and jails housed 1,099,240 inmates during 1989—federal prisons housed 52,984 inmates, state prisons housed 650,703 inmates, and local jails housed 395,553 inmates. While the number of mentally ill individuals in prisons and jails is unknown, studies estimate that between 6 and 14 percent of the correctional population may have major psychiatric disorders. Mentally ill inmates are considered special needs offenders and often require specialized housing and security in addition to such mental health services as psychological screening, counseling, psychotherapy, and medication.

In response to a study that disclosed abuse, neglect, and rights violations of mentally ill individuals in state facilities, Congress passed the Protection and Advocacy for Mentally Ill Individuals Act of 1986. The Act was designed to protect the rights of the mentally ill by assisting states in establishing and operating protection and advocacy systems to protect or uphold patients' rights and investigate incidents of abuse and neglect. (See app. I for the Act's definitions.) The Act itself does not create any rights to care and treatment; rather, the Act is intended to

secure for mentally ill individuals their rights under existing statutes or other sources of law.

The Act provides for a scheme of funding allotments to advocacy systems established in the states and U.S. territories, known as Protection and Advocacy Systems for the Mentally Ill (PAMI). PAMIs are independent agencies designated by the governor of each state and may be either state agencies or private, nonprofit organizations. However, they may not be affiliated with any organization that provides treatment or services to mentally ill individuals. The Act provides that, in each state, PAMIs must have access to facilities that provide mental health care and access to records of an individual who is a client. Generally, PAMI clients must (1) have a "significant mental illness or emotional impairment" as determined by a qualified mental health professional and (2) reside in "a facility rendering care and treatment" (e.g., public and private hospitals and schools, nursing homes, community and group homes).

Mentally ill individuals can become PAMI clients if (1) the individual reports to a PAMI an allegation that falls within the Act's definition of abuse or neglect, (2) another person reports an allegation on behalf of the mentally ill individual, or (3) there is probable cause to believe that abuse or neglect exists. PAMIs are not required to investigate every allegation of abuse or neglect, even if the allegation is substantiated. Rather, PAMIs decide to investigate on the basis of their own policies and priorities. If a PAMI chooses to investigate and the allegation is substantiated, it can intervene in a variety of ways. These interventions include counseling the mentally ill on how to resolve their own problems, using formal administrative hearings or appeals, taking legal action on behalf of the individual client, or initiating class-action litigation. Often, more than one intervention or follow-up is necessary to resolve a problem. Consequently, a client may maintain an ongoing relationship with the PAMI until the complaint is resolved.

The Secretary of the Department of Health and Human Services (HHS) is responsible for administering the Act through the National Institute of Mental Health (NIMH). NIMH is responsible for providing national policy guidance on protection and advocacy issues; dispensing funds for the establishment and operation of PAMIs; and providing administrative oversight, training, and technical assistance. Each PAMI is required to submit an annual report to NIMH describing the activities, accomplishments, and expenditures of the system. NIMH compiles this information, which is reported annually to Congress as part of HHS' report on the Developmental Disabilities Assistance and Bill of Rights Act.

During fiscal year 1990 Congress appropriated about $14 million to NIMH for 56 PAMIs in the United States and U.S. territories. Each PAMI received federal grants of between $89,000 and $1.1 million. The amounts of annual allotments are determined by the respective state populations and per capita incomes. PAMIs can also receive additional funding from state agencies and private organizations.

Results in Brief

The extent to which mentally ill individuals in correctional facilities are subject to abuse and neglect is unknown. NIMH reported in 1989 that 533 of the 18,498 cases handled by the PAMIs dealt with prison and jail inmates, and the Federal Bureau of Prisons (BOP) records showed that since 1986 18 inmates had filed grievances involving mental health complaints. However, these figures are likely to be incomplete because cases of abuse or neglect might not have been reported to a PAMI or BOP. Studies on the mentally ill in correctional facilities and testimonial information from the 1988 hearing before the Senate Subcommittee on the Handicapped suggest that mentally ill individuals are subject to abuse and neglect in state prisons and jails.[1]

Inmates of correctional facilities may be eligible for PAMI services under two provisions of the Act: (1) a special provision added in 1988 that allows representation of unsentenced individuals in municipal jails and (2) a general provision that since the Act's passage has covered mentally ill individuals in a "facility rendering care or treatment." NIMH had historically interpreted the general provision as applying to state and local prisoners in forensic units of prisons.[2] In August 1990, NIMH revised its policy to also allow the PAMIs to provide protection and advocacy services to mentally ill inmates in the general population in nonfederal facilities. Eligible inmates are those who are seeking or have been denied access to mental health evaluation, treatment, or services.

However, mentally ill individuals in federal correctional and noncorrectional facilities remain uncovered. In 1987, HHS' Office of General Counsel issued a determination that federal facilities were not covered by the Act. On the basis of our review of the relevant statute and legislative history, we believe that there is legal support for HHS' opinion. Therefore, a change in the law would be required to extend coverage to mentally ill individuals in federal facilities.

[1]The Subcommittee is now called the Subcommittee on Disability Policy.

[2]Forensic units provide mental evaluations and treatment for unsentenced individuals, including those adjudicated by the courts as not guilty by reason of insanity or incompetent to stand trial.

Better data on the extent of abuse and neglect could result from more PAMI involvement on inmate complaints and better reporting on PAMI activities. In the wake of NIMH's 1990 policy revision, it remains to be seen whether PAMIs will devote more of their resources to inmate complaints. Nevertheless, NIMH could improve available data by requiring the PAMIs to report the number and type of complaints and their status and disposition by type of facility and by including the information in HHS' annual report to Congress.

Objectives, Scope, and Methodology

Our objectives were to (1) determine the extent to which mentally ill individuals in federal, state, and local correctional facilities are subject to abuse and neglect as defined by the Protection and Advocacy for Mentally Ill Individuals Act of 1986; and (2) assess whether mentally ill individuals in correctional facilities are covered by this Act.

To meet the first objective, we did a literature search that yielded 28 studies and articles dealing with medical and mental health issues of offenders. We also contacted officials from California, Florida, Michigan, New York, Ohio, and Texas, because these six states had 43 percent of the total state prison population in 1989. Officials we contacted included those from the states' departments of mental health and corrections, public defender's offices (except for Texas), and PAMI agencies to obtain any information they had on the number of mentally ill prisoners and their views on the incidence of abuse and neglect in correctional facilities. The Texas public defender office that we contacted did not respond to our requests for information on protection and advocacy matters.

We also contacted officials representing BOP, NIMH, the American Civil Liberties Union (ACLU), the National Association of Protection and Advocacy Systems, the American Jail Association, the National Association of Counties, and a federal public defender's office.

We also reviewed the information contained in the reports the PAMIs we contacted sent to NIMH for 1989 and the overall 1988 and 1989 submissions NIMH prepared on PAMI activities for inclusion in HHS' annual reports to Congress. We reviewed these reports to assess whether they provided sufficient information with which to evaluate the extent of abuse and neglect in correctional facilities.

To meet the second objective, we obtained information from the director of NIMH's Protection and Advocacy Program. This official provided policy information, as well as NIMH's interpretation of the law as it

applies to federal, state, and local correctional facilities. The HHS' Office of General Counsel provided a legal opinion on the exclusion of federal facilities from the Act. We also made a legal assessment of the applicability of the Act to federal correctional facilities. In addition, we contacted BOP officials concerning the applicability of the Act to federal prisoners.

We asked officials that we contacted about (1) the need for protection and advocacy for mentally ill inmates; (2) whether abuse and neglect were a problem in correctional facilities; and (3) whether protection and advocacy services should be provided by PAMIs, public defenders, or others. (See app. II for listing of offices contacted.) We also asked the PAMIs and public defenders about the involvement of public defenders in protection and advocacy matters. Specifically, we wanted to know, among other things, if the public defenders were involved with such matters, if any strategies or coordination existed between them and the PAMIs on the handling of prisoner complaints, and if they received any training or assistance from PAMIs.

We obtained informal comments from BOP and NIMH officials on a draft of this report. Their comments and our response are discussed on page 12. We did our work between January 1990 and January 1991 in accordance with generally accepted government auditing standards.

Extent of Abuse and Neglect Is Unknown

The incidence of abuse and neglect of mentally ill individuals in federal, state, and local correctional facilities is unknown. In its 1989 annual report, NIMH said that, out of 18,498 total cases, the PAMIs reported 533 involved prison and jail inmates. (This figure does not include cases dealing with prison or jail inmates that had not been reported to a PAMI.) For its part, BOP does not compile specific data on instances of abuse and neglect. However, BOP has an inmate grievance reporting system, which since 1986 showed that 18 inmates filed grievances involving mental health complaints such as insufficient mental health treatment and staff, unnecessary medication, and unnecessary placement in a mental health treatment unit. BOP reported that about 43,000 inmate grievances were filed for all reasons during this period.

Studies and articles dealing with mental health issues of offenders that we reviewed cited instances of inadequate treatment or problems with the delivery of mental health care in jails and prisons. However, none contained overall data on or estimated a percentage of the incidence of inmate abuse or neglect.

Testimonial information indicates that inmate abuse and neglect have occurred. In a hearing before the Senate Subcommittee on the Handicapped on May 10, 1988, the President of the National Mental Health Consumers' Association testified that abuse and neglect of mentally ill people in prisons and jails are not well documented, but verbal reports state that they are widespread. Twenty-one of 30 officials (70 percent) we contacted representing state agencies, NIMH, and other organizations told us that abuse and neglect in state and local correctional facilities are a problem. Nine told us that the mentally ill in these facilities are often ignored, denied treatment, placed in isolation without treatment, or victimized by other inmates.

Officials from the American Jail Association, the National Association of Counties, and the ACLU expressed the opinion that neglect often occurs in jails where mentally ill inmates are isolated from the general population instead of being provided mental health treatment. The Director of the American Jail Association stated that jails generally do not provide mental health services except for screening inmates who may be suicidal.

NIMH Policy Covers State and Local Inmates

The 1986 Act did not specifically address PAMIS' representation of mentally ill individuals in jails and prisons, but provided for coverage of mentally ill individuals in a "facility rendering care or treatment." Section 102, as amended, 42 U.S.C. section 10802(3)(B)(i). NIMH has interpreted the requirement that individuals reside in a "facility rendering care or treatment" as allowing coverage of state and local prisoners who have been confined to forensic units in prisons. As a matter of long-standing policy, NIMH also has allowed PAMIS to represent prisoners only in proceedings that relate to their mental health.

In 1988, Congress amended the Act to provide for coverage of specific categories of mentally ill individuals, including unsentenced individuals confined in municipal jails, but did not change the scope of the provision covering other individuals in a "facility rendering care or treatment." In August 1990, NIMH issued revised policy guidance addressing the coverage of mentally ill inmates. The revised policy guidance allows PAMIS to represent not only mentally ill individuals in forensic units of prisons, but also individuals confined within a prison's general population if they are seeking or have been denied access to mental health evaluation, treatment, or services.

Federal Inmates Are Not Covered by the Act

As noted above, protection and advocacy systems established under the Act may represent mentally ill individuals, and these individuals are defined as including inpatients or residents in a "facility rendering care or treatment." Because the Act does not further define the term "facility," questions have been raised as to whether the Act covers individuals in federal facilities. In 1987, responding to questions from several Protection and Advocacy Program officials who had been denied access to federal prisons and Veterans Administration hospitals, HHS's Office of General Counsel determined that federal facilities were not covered by the Act. HHS's legal opinion relies primarily on the absence of any language in the Act expressly including federal facilities within the Act's provisions.

We believe that the HHS opinion is supported by an analysis of the Act. The Act does not make any reference to federal facilities, and its basic requirements are framed in terms of state law and processes with respect to facilities under state control. In particular, one of the Act's requirements is that, for a state system to be eligible for funding, it must have a right of access to facilities in the state providing care or treatment and a right of access to the records of individuals in those facilities under specified terms and conditions (42 U.S.C. sections 10805(a)(3) and (4); 42 U.S.C. section 10806). States with laws prohibiting such access to records were given 2 years to revise their laws to comply with the Act's requirements before losing their eligibility for funding (42 U.S.C. section 10806(b)(2)(C)). Although the Act addresses these access issues subject to state control with a great deal of specificity, it makes no mention of access to federal facilities or the records they maintain.

Furthermore, provisions of the Act bearing on its basic scope and objectives speak only in terms of problems to be remedied at the state and local levels. The preamble to the Act recites several congressional findings prompting the Act's passage, one of which was: "State systems for monitoring compliance with respect to the rights of mentally ill individuals vary widely and are frequently inadequate" (42 U.S.C. section 10801(a)(3)). This statement in the Act, together with the Act's legislative history, reflects Congress' determination that enhanced protection and advocacy services were necessary to fill in the gaps of state supervisory processes, the weaknesses of which had been disclosed by a Senate staff investigation of state-operated facilities for the mentally ill. Congress cited problems in state facilities uncovered by this investigation, and the "perception of need for further attention at the state and local

levels to affirm and enforce the rights of the mentally ill" as its motivation for establishing the protection and advocacy system (S. Rep. No. 109, 99th Cong., 1st Sess. 2,3).

Another section of the Act evidencing Congressional concern with state law and processes contains a restatement of prior law enumerating the rights, protections, and services mentally ill individuals should be afforded (42 U.S.C. section 10841). This section provides that each state should review and revise its laws to incorporate enumerated rights, one of which is that mentally ill individuals in the states should be granted a right of access to protection and advocacy systems established under the Act (42 U.S.C. section 10841(1)(M).

In short, we believe that the framework of the 1986 Act supports HHS's conclusion that it was designed to extend protection and advocacy services only to those individuals in state and local facilities. Furthermore, for the reasons explained below, we do not believe that the subsequent history of the Act compels HHS to reach a different conclusion.

During hearings on the 1988 reauthorization of the protection and advocacy program, several advocacy groups contested HHS's interpretation of the Act as excluding federal facilities and urged Congress to amend the statutory phrase "facility rendering care or treatment" to explicitly include federal facilities. While the reauthorization legislation amended several provisions in the definitional section of the Act, it left the language in question unchanged. The Senate report accompanying the reauthorization legislation referred to the issue of the 1986 Act's extension to federal facilities, and stated that:

> "It is the Committee's clear intent that the PAMI system is authorized to use funds under this Act to provide representation to mentally ill individuals in Federal facilities who request representation by the PAMI system and that such representatives be accorded all the rights and authority accorded to other representatives of residents in Federal facilities." (S. Rep. No. 454, 100th Cong., 2d Sess. 11.)

We believe that the committee report statement does not in itself require an interpretation of the 1986 Act as applying to federal facilities. The courts have consistently held that committee report statements that do not explain new or altered statutory language have little significance in

the interpretation of a statute.[3] Furthermore, neither the House committee report nor the conference explanation of the reauthorization legislation refers to the issue of coverage of federal facilities, and in fact the reports' explanation of an amendment to one of the Act's provisions dealing with access to records suggests that at least in that context a narrower view of covered facilities subsisted. Specifically, in explaining a new provision requiring advocacy systems to have access to reports prepared by an "agency" charged with investigating abuse and neglect at a "facility rendering care or treatment," the reports explained that the term "agency" was meant to refer to "any State, county, or municipal agency charged with the responsibility of investigating incidents of abuse and neglect in public residential facilities for the treatment of mentally ill individuals" (134 Cong. Rec. 28565-68 (1988) (conference explanation); H.R. Rep. No. 903, 100th Cong., 2d Sess. 7 (1988)).

Extended Coverage and Reporting Requirements Could Yield Better Data

NIMH's Director of the Protection and Advocacy Program told us that before NIMH revised its policy in August 1990, the PAMIs were generally not providing protection and advocacy services to mentally ill inmates in the general prison population. Four of the six PAMIs we contacted said, however, that they did provide advocacy services to mentally ill inmates in prison forensic hospitals. All six PAMI officials we spoke with said that they usually referred complaints from general population prisoners to public defenders or prison rights organizations.

Our work indicated that public defenders do not provide the types of services PAMIs provide. Of the seven state and county public defenders and six PAMIs we contacted, three (two public defenders and one PAMI) thought that public defenders should do the work of PAMIs in serving the needs of mentally ill prisoners, and seven (three public defenders and four PAMIs) thought that they should not. Two (one public defender and one PAMI) had no opinion, and one (a public defender) thought that someone other than a PAMI or public defender should provide protection and advocacy for mentally ill prisoners. (See app. II.) While two public defenders said they receive inmate referrals from PAMIs, all told us that they had little or no interactions or agreements with PAMIs and received no training or technical assistance from PAMIs. Two PAMIs told us that they provide technical assistance to public defenders on specific cases, and one said they had also provided training. The public defenders also

[3]See, e.g., Pierce v. Underwood, 487 U.S. 552, 566-68 (1988); Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102, 117-20 (1980); American Hosp. Ass'n v. N.L.R.B., 899 F.2d 651, 657 (7th Cir. 1990).

told us that they generally do not get involved with post-sentenced inmates or prison treatment issues.

The August 1990 policy revision could increase the level of PAMI involvement with mentally ill inmates of state and local correctional facilities. Twenty-five of 30 officials (83 percent) we contacted said that there was a need for protection and advocacy services for mentally ill inmates, and 12 of 21 (57 percent) responding to our question on who should provide these services said that the PAMIs should. (See app. II.)

It remains to be seen whether PAMIs will focus more attention on mentally ill inmates. Representatives of the PAMIs that we contacted had mixed views on this; two thought the revised policy would lead to more involvement with inmates, three thought it would not, and one had no opinion. Besides questions about the scope of the Act's coverage, NIMH and PAMI officials identified several factors that have combined in the past to limit the involvement of the PAMIs in advocating the rights of mentally ill inmates in state and local facilities. These include limited PAMI resources, inexperience with the criminal justice system, and difficulties gaining access to state and local correctional facilities.

NIMH officials have no plans to encourage or monitor PAMI involvement with mentally ill inmates. They believe that the PAMIs should continue to have discretion in their choice of clients, since the Act allows PAMIs to set their own priorities. It remains to be seen whether PAMIs will respond to NIMH's August 1990 policy revision by devoting more of their resources to inmate complaints.

NIMH requires that the PAMIs report annually the number of clients served, the number and type of complaints received, and the type of facility a client is located in at the time of a complaint, e.g., prison or private hospital. However, the information as reported cannot be associated across reporting categories to identify by facility type the nature of the complaints received or how they were handled and disposed.

Increased involvement with mentally ill inmates would put the PAMIs in a position to obtain better information on the extent of abuse and neglect in correctional facilities and the types of protection and advocacy services needed. Requiring PAMIs to identify and report on their activities and cases by type of facility would represent a minor extension to current reporting requirements, but it could significantly improve the quality of information available to Congress, NIMH, and the PAMIs.

Conclusion

The extent to which mentally ill inmates of prisons and jails are subject to abuse and neglect is unknown. Available empirical data are limited to PAMI reports on the number of inmate complaints or requests that they receive and to BOP's statistics on complaints filed under its inmate grievance system. These statistics are likely to be incomplete since cases of abuse or neglect may not have been reported to a PAMI or BOP. Most officials we contacted believe that abuse and neglect of mentally ill inmates exist, but could not provide empirical data on their extent. NIMH does not require the PAMIs to gather and summarize information on the protection and advocacy services provided to mentally ill clients in jails or prisons. Better information on the nature and extent of abuse and neglect of mentally ill inmates could be obtained if PAMIs and NIMH reported the number and types of complaints received and their status and disposition by type of facility.

Mentally ill prisoners in state and local correctional facilities who are confined in forensic units or who are seeking or have been denied access to treatment are eligible for PAMI services under NIMH's policy revisions made in August 1990. However, the Act does not cover mentally ill individuals in federal correctional or other facilities.

Because of NIMH's prior policy on inmate representation and PAMI resource constraints, PAMIs have provided few protection and advocacy services for mentally ill inmates, particularly those in the general prison population. In the wake of NIMH's 1990 policy revision, it remains to be seen whether PAMIs will devote more of their resources to inmate complaints. NIMH has no plans to encourage or monitor PAMI involvement with mentally ill inmates, since the Act allows PAMIs to set their own priorities.

Recommendation

We recommend that the Secretary of HHS require NIMH to have the PAMIs identify in their annual reports to NIMH the number and types of complaints received and their status and disposition by type of facility for inclusion in the Secretary's annual report to Congress on protection and advocacy matters.

Agency Comments and Our Response

We discussed the information in this report with BOP and NIMH officials. They generally agreed with the facts presented and our recommendation. The Director of NIMH's Protection and Advocacy Program told us that our recommendations would provide better information on PAMI involvement with mentally ill prisoners. She noted, however, that this

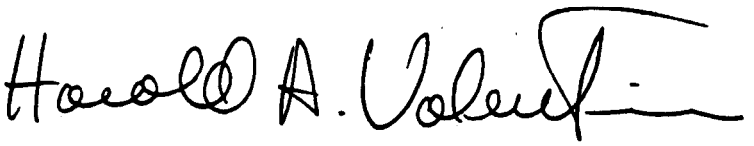
information would not include any cases of abuse and neglect in correctional facilities that were not reported to the PAMIs. She said that if Congress wants that kind of information, the Act could be revised in one of two ways. First, Congress could require a one-time study to develop baseline data on abuse or neglect in correctional facilities. On the other hand, Congress could require the facilities to report all known cases involving abuse and neglect.

We believe that the feasibility and practicality of these actions are questionable. Before such extensive measures are considered, we believe more precise reporting by PAMIs and NIMH could help provide needed perspectives on this issue. The August 1990 policy revision may lead to more PAMI involvement with prisoners. Also, implementing our recommendation would provide NIMH and Congress with (1) better information on abuse and neglect in all facilities rendering care or treatment including correctional facilities and (2) an enhanced basis for determining if special actions are needed to address the problems. Until then, the lack of readily available information on the incidence of abuse and neglect and the inherent difficulties and cost involved in obtaining reliable data from thousands of prisons and jails argue against undertaking a special study.

Having correctional facilities report on the incidence of abuse and neglect is also questionable. Specifically, the reliability of such reports could be suspect since correctional officials would be asked to reveal their own mistakes or wrongdoing. Further, we do not believe prisons and jails should be singled out for special study or self-reporting. If these actions are desired, they should involve all types of facilities providing mental health care.

As arranged with the subcommittees, we plan no further distribution of this report until 30 days after its date, unless you publicly release its contents earlier. Copies of the report will then be sent to the Attorney General, the Secretary of HHS, officials at BOP and NIMH, the state agencies and national organizations that we contacted, and other interested parties.

Major contributors to this report are listed in appendix III. If you have any questions about the contents of this report, please call me at (202) 275-8389.



Harold A. Valentine
Associate Director, Administration
of Justice Issues

Definitions in the Protection and Advocacy for Mentally Ill Individuals Act of 1986 as Amended, 42 U.S.C., Section 10802

The following is an extract from section 10802, "definitions":

"For purposes of this subchapter:

"(1) The term "abuse" means any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to a mentally ill individual, and includes acts such as-

(A) the rape or sexual assault of a mentally ill individual;

(B) the striking of a mentally ill individual;

(C) the use of excessive force when placing a mentally ill individual in bodily restraints; and

(D) the use of bodily or chemical restraints on a mentally ill individual which is not in compliance with Federal and State laws and regulations.

"(2) The term "eligible system" means the system established in a State to protect and advocate the rights of persons with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act [42 U.S.C. 6041 et seq.].

"(3) The term "mentally ill individual" means an individual-

(A) who has a significant mental illness or emotional impairment, as determined by a mental health professional qualified under the laws and regulations of the State; and

(B) (i) who is an inpatient or resident in a facility rendering care or treatment, even if the whereabouts of such inpatient or resident are unknown;
(ii) who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility; or
(iii) who is involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction for a criminal offense.

"(4) The term "neglect" means a negligent act or omission by any individual responsible for providing services in a facility rendering care or

treatment which caused or may have caused injury or death to a mentally ill individual or which placed a mentally ill individual at risk of injury or death, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan for a mentally ill individual, the failure to provide adequate nutrition, clothing, or health care to a mentally ill individual, or the failure to provide a safe environment for a mentally ill individual, including the failure to maintain adequate numbers of appropriately trained staff.

"(5) The term "Secretary" means the Secretary of Health and Human Services.

"(6) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands."

Agencies Contacted and Their Views on Selected Protection & Advocacy (P&A) Issues for Mentally Ill Offenders

State/county agencies	Need for P&A			Is abuse/ neglect a problem?			Who should provide P&A services?			
	Yes	No	N/C	Yes	No	N/C	PD	PAMI	Other	N/C
California Dept. Of Corrections			X			X				X
California Dept. of Mental Health			X		X				X	
California Protection & Advocacy	X			X				X		
Sacramento Public Defender	X			X				X		
Florida Dept. of Corrections	X			X					X	
Florida Dept. of Mental Health	X			X						X
Florida Protection & Advocacy	X			X				X		
Florida Public Defender	X			X				X		
Michigan Appellate Council (PD)	X			X					X	
Michigan Dept. of Corrections	X			X				X		
Michigan Dept. of Mental Health			X			X				X
Prison Legal Services - Michigan	X			X						X
Michigan Protection & Advocacy	X			X						X
New York Dept. of Corrections[a]	X					X	X	X	X	
New York Office of Mental Health	X			X						X
New York Protection & Advocacy	X			X				X		
New York Public Defender	X			X						X
Ohio Dept. of Corrections	X					X				X
Ohio Dept. of Mental Health	X			X						X
Ohio Protection & Advocacy	X					X	X			
Ohio Public Defender[b]	X			X				X		
Ohio Public Defender	X			X			X			
Ohio Public Defender	X			X			X			
Texas Dept. of Corrections		X			X					X
Texas Dept. of Mental Health	X			X				X		
Texas Protection & Advocacy	X			X				X		
Other organizations										
ACLU Prison Project	X			X						X
Federal Public Defender	X				X		X			
National Association of P&A Systems	X			X				X		
NIMH			X			X		X		
Total	**25**	**1**	**4**	**21**	**3**	**6**	**5**	**12**	**4**	**11**

Legend: N/C - no comment
PD - public defender

[a]New York Dept. of Corrections provided three responses.

[b]Three Ohio public defenders responded.

Major Contributors to This Report

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