

**United States District Court  
for the  
District of Delaware**

PHILIP A. WHARTON, JOSEPH	)	
ROUNDTREE, JAMES MADDOX	)	
and LAMAR CORREA	)	
	)	C.A. No.: 12-1240-LPS
Plaintiffs,	)	
	)	JURY TRIAL DEMANDED
v.	)	
	)	<u>AMENDED COMPLAINT</u>
CARL C. DANBERG, CATHY	)	
ESCHERICH, and REBECCA	)	CLASS ACTION
MCBRIDE	)	
	)	
Defendants.	)	

**INTRODUCTION**

1. This is an action brought by Philip A. Wharton, Joseph Roundtree, James Maddox and Lamar Correa as plaintiffs on their own behalf and on behalf of the class defined below (injured or presently subject to injury) from the practice of the Delaware Department of Corrections (DDOC) of over-detaining inmates and by the defendants' deliberate indifference to the effect of the DDOC practice of over-detention on the rights of inmates. To over-detain means holding a detainee or prisoner in a DDOC facility more than 12 hours beyond when a Court order releasing the detainee or prisoner has been forwarded to Central Offender Records (COR) or when a detainee or prisoner is held past the day that his or her sentence has ended.

2. Plaintiffs bring this action against the defendants under Section 1983 of the Civil Rights Act of 1871, 42 U.S.C. §1983 to enforce the Fourth, Fifth and Eighth Amendments for injuries suffered by them when the defendants caused them to be over-detained and other members of the class.

3. Plaintiffs bring this action on behalf of themselves and all others similarly situated,

pursuant to Fed. R. Civ. P. 23(a) and (b)(2).

4. At all times pertinent Carl C. Danberg was Commissioner of the DDOC, Attorney General of the State of Delaware, or Deputy Principal Assistant to the Commissioner of the Department of Correction.

5. Cathy Escherich was Director of COR during some of the time pertinent to this case.

6. Rebecca McBride was Director of COR during some of the time pertinent to this case.

#### JURISDICTION AND VENUE

7. This Court has jurisdiction over this action under the provisions of 28 U.S.C. §1331 and 1343 because it is filed to obtain compensatory damages, punitive damages, and injunctive relief for the deprivation, under color of state law, of the rights of citizens of the United States secured by the Constitution and federal law pursuant to 42 U.S.C. §1983. This Court also has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§2201 and 2202, and Rule 57 of the Federal Rules of Procedure.

8. Venue is proper under 28 U.S.C. § 1391(e)(2) because the events giving rise to Plaintiff's claims and those of proposed class members occurred in this judicial district.

#### CLASS ACTION ALLEGATION

9. The Over-detained Named Plaintiffs bring this action under Rules 23(a), 23(b) (2) and 23(b)(3), of the Federal Rules of Civil Procedure on behalf of a class consisting of: (a) Each person who has been, is, or in the future will be incarcerated in any DDOC facility from October 1, 2008 forward; and (b) who was not released, or, in the future, will not be released within 12

hours of the time that a Court order has been forwarded to COR releasing the person or is not released by midnight of the day his or her sentence has ended.

10. Certification of this class under Federal Rule of Civil Procedure 23(b)(2) is appropriate, because the defendants have a pattern and practice that has uniformly affected all members of both classes, and injunctive relief against the defendants will benefit each and every plaintiff and class member. These patterns and practices have been known to defendants since at least 2008 and continue unabated, thus it is clear that a court order is necessary to insure the rights of the class members.

11. This action has been brought and may properly be maintained as a class action pursuant to the Federal Rules of Civil Procedure, as Plaintiff and the Class satisfy the numerosity, commonality, typicality and adequacy requirements for maintaining a class action under FED. R. Civ. P. 23(a).

12. Upon information and belief, joinder of all of these individuals is impracticable because of the large number of Class members and the fact that Class members may be dispersed over a large geographical area, with some members presently residing outside of Delaware and the geographic area served by this Judicial District.

13. The classes are entitled to injunctive relief, for example, setting up an independent monitor to supervise DDOC's inmate records management system to ensure that all inmates are timely released after the legal justification for their incarceration has ceased.

14. Certification of a class under Federal Rule of Civil Procedure 23(b)(3) is also appropriate, in that common questions of law and fact predominate over any individual questions, and a class action is superior for the fair and efficient adjudication of this controversy as detailed below.

15. Among the questions of law and fact common to the classes are:
- a) the maximum length of time a person may be held while defendants perform administrative tasks incident to their release from custody beyond which it is a violation of their constitutional rights;
  - b) whether the defendants, through their actions have caused or allowed to occur over-detentions exceeding that maximum for each class member;
  - c) whether defendants have a pattern and practice of holding detainees and inmates more than 12 hours past the time that a Court order has been forwarded to COR ordering their release;
  - d) whether defendants have a pattern and practice of holding inmates past the day their sentence has expired;
  - e) whether the defendants are aware of and have failed to address a pattern and practice of being deliberately indifferent to the rights of detainees and inmates by ignoring DDOC's practice of over-detaining them;
  - f) whether defendant's acts as alleged herein violate the Constitution of the United States;
  - g) whether such patterns and practices, if found to exist, violate the Fourth and/or Fifth Amendments;
  - h) whether plaintiffs, the other members of the Over-detention Class and future members of the Over-detention Class are entitled to equitable relief, and, if so, the nature of that relief;
  - i) whether determination of damages suffered by a statistically representative sample of the class provides the basis for determination of all class

members' damages except those who opt out.

16. Regarding the Over-detained Named Plaintiffs, there are no individual questions on the issue of liability other than whether an individual has been over-detained as defined above, and the answer to that question can be determined by ministerial inspection of the DDOC's records.

17. A class action is the superior method for the fair and efficient adjudication of this controversy, since joinder of all of the individual members of the Class is impracticable given the large number of Class members and the fact that they are dispersed over a large geographical area. Furthermore, the expense and burden of individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them. The cost to the federal court system of adjudicating hundreds of individual cases would be enormous. Individualized litigation would also magnify the delay and expense to all parties and the court system. By contrast, the maintenance of this action as a class action in this Court presents far fewer management difficulties, conserves the resources of the parties and the court system, and protects the rights of each member of the Class.

18. Computer records are available for inspection concerning the over-detentions.

19. The over-detention problem is even worse for inmates who:

- a) cannot speak English;
- b) have limited English skills;
- c) have mental health or other problems that make it difficult for them to communicate; and
- d) inmates who have no one on the outside to advocate for them.

20. For these inmates who are over-detained, days and weeks of over-detention are

not at all uncommon. It is these individuals for whom a class action is particularly appropriate, as without a class action, these individuals most likely would not have the ability or opportunity to bring a lawsuit for their over-detention.

21. The Over-detained Named Plaintiffs' claims are typical of the claims of the other members of the class, as plaintiffs and all other members of the class were injured by exactly the same means, that is, by the over-detentions.

22. The Named Plaintiffs have no interests that are contrary to or in conflict with those of the class.

23. Plaintiffs are aware of two other pending cases in this court, which address, in part, defendants' flagrant violation of the civil rights of the members of the Over-detention Class. The first case is *Nancy Dinote v. Carl C. Danberg, et al.*, C.A. No.: 12-377-GMS, which in addition to a claim that Ms. Dinote was over-detained for nearly a day, also contains a claim involving equal protection and allegations of serious physical injury. The second case, *Errol Springer v. Carl C. Danberg, et al.*, C.A. No.: 12-392-GMS includes a claim that false testimony by a probation officer was initially responsible for plaintiff's illegal incarceration in addition to claims that dysfunction in COR contributed to his over-detention of two years and eleven months. The fact patterns of these cases are different from the common fact pattern of the over-detention class.

#### DYSFUNCTIONAL PROCEDURES AND PRACTICES OF THE DELAWARE DEPARTMENT OF CORRECTIONS

24. The DDOC holds prisoners and detainees committed by the Delaware State Courts and other agencies in a variety of correctional facilities.

25. Once an inmate or detainee is placed in the custody of a DDOC facility, he or she

cannot be released from custody until a judicial order releases him or her or the reason for the incarceration expires.

26. According to the DDOC website, COR "is primarily responsible for calculating offender's sentences and release dates. This unit houses and controls all active and inactive institutional and probation/parole offender records." Also according to the DDOC website, the general activities at COR include calculating offender sentences and preparing releases as ordered by the Court.

27. An inmate or detainee who has had his bail posted, had a judge order unsecured bail, or had a judge order that they be released without bail, still cannot be released until the judicial order has been processed by COR. Release orders from the Courts are transmitted to COR by fax machine. Subsequently, it is expected that a COR employee will fill out a check list on a computer screen to determine whether any reason remains to continue to hold the offender in custody. The checklist includes reminders to:

- a) check the "offender blue sheet" to determine if there are any open charges against the offender;
- b) check to make sure the offender is not being monitored by probation and parole;
- c) check to make sure that there are no outstanding warrants of any type from any jurisdiction holding the offender; and
- d) check all paperwork in "Records" for any legal documents on the inmate.

28. If all of the checklist information is satisfactory, the COR employee checks off the appropriate preprinted instructions to the receiving room staff to do such things as verify the identity of the inmate by photograph, return the inmates property, and have the inmate sign any

bail or bond papers that need to be signed prior to releasing the inmate.

29. A similar checklist exists for an inmate or detainee for whom the reason for the incarceration has expired. However, that checklist also requires the COR employee to review the current active legal section to ensure the accuracy of sentence calculation and release date.

30. COR is only open from 6:00 am to midnight Monday through Friday, 6:00 am to 3:00 pm on Saturday, 12:00 noon to 6:00 pm on Sundays, and is closed on holidays. Obviously, no processing of release papers takes place during the time that COR is closed.

31. Clerks from the various courts in Delaware report that COR frequently denies receiving the release orders which have been faxed to COR. The clerks sometimes have to fax the release papers several times before receipt is acknowledged by COR.

32. Bail bondsmen in Delaware who have put up bond for incarcerated individuals find that they frequently have to explain to the family or friends of the inmate for whom bail has been posted, why it is taking so long for the inmate to be released after bail has been posted. Especially since this delay can last days or weeks.

33. DDOC has recently begun to acknowledge its failures to promptly process release orders from the Court. Bail bondsmen and others posting bail are now being told that it might take as much as 24 to 48 hours before the release order is processed by COR and the inmate for whom bail has been posted will be released. Despite the knowledge that DDOC's practices regarding processing release orders from the courts is indefensibly dysfunctional, defendants have done nothing about the problem.

34. COR employees frequently cannot be reached by phone by a bail bondsman or the family or friends of those for whom bail has been posted. Even when reached, COR employees complain of inadequate staff and provide little information to the caller. Because of the



frustration with COR, friends and family of inmates have resorted to subterfuge, such as telling the COR employees that they are correctional officers when calling for information concerning their loved ones. Otherwise, they get no help from COR.

35. The standard practice of COR employees and of all other DDOC employees who work with prisoner release records is to refuse to respond to any inquiries from inmates. C/Os or counselors in DDOC facilities sometimes assist inmates with obtaining documentation from COR. Frequently there is still a significant delay in the information being received by the C/Os and the C/Os or counselors only help when they feel like it, which is infrequent. As a result inmates cannot obtain the very documentation that is necessary to prove that they are being over-detained and are denied access to the courts.

36. The significant problem with over-detention has been going on at least since August of 2008 and is well known to other government agencies, such as the Public Defender's office. At least one Public Defender's office has programed its computers to flag release dates so that they can try to keep track of whether or not their clients have actually been released as ordered. That same public defender's office has a clerical person who spends a considerable portion of her time working solely on over-detention issues.

37. Defendants plus the wardens at DDOC facilities, COR and Governor Markel have received numerous complaints about the over-detention problem since August of 2008. Complaints have come by mail, email and by phone. Apparently there is or was a website to which individual government employees were posting complaints about COR and the over-detention problem.

38. Individuals who have been charged with serious crimes can be taken to the Justice of the Peace Court for their initial court appearance 24 hours per day, seven days a week.

However, if these individuals are to be released on unsecured bail or have posted their bail upon arrival at the Justice of the Peace Court, they are frequently subject to remaining detained in a prison for 24 hours or more. Because COR is only open until 3:00 pm on Saturdays and closed on holidays, when a Sunday falls on a holiday, COR is closed for at least 39 consecutive hours during which no release papers are being processed. Even when Sundays are not holidays, COR is closed at least 22 consecutive hours over the weekend.

39. Even if COR is open when the Justice of the Peace Court has faxed a release order to it, the delay in COR responding, frequently exceeds at least 12 hours, and often exceeds 24 hours or more. Delays of days or weeks is not uncommon. As a result JP Court staff frequently have to spend a lot of time trying to explain to irate family members, of incarcerated individuals, why their loved one has not been released despite the fact that bail was posted many hours or even days before.

40. Reportedly, there has been conflict between the office of the Chief Magistrate of the Justice of the Peace Courts and the office of the Commissioner of Correction concerning the continuing over-detention problem. The Chief Magistrate's office has been particularly frustrated that this over-detention problem has been going on for so many years without resolution and what appears to be no adequate steps being taken by the Commissioner's office to solve this problem.

41. The experience in the Superior Courts, Family Courts and Courts of Common Pleas is that inmates for whom bail has been posted or inmates who have been ordered released frequently are detained more than 12 hours past the time that the release order has been forwarded to COR. The same is true for inmates for whom the reason for incarceration has expired, as those inmates often spend considerably more than a day over-detained while COR,

for whatever reason, fails to provide the appropriate documentation to the correctional facility.

42. Inmates who request help from C/Os, counselors or other DDOC employees at the various DDOC facilities concerning why they have not been released when bail has been posted or their sentence is expired, invariably get told that the problem lies with the "Records Department", "Central Records", or the "Records Department in Dover". Also, almost invariably they get no assistance from DDOC employees in correcting the over-detention.

#### EXAMPLES OF OVER-DETENTION

43. "Over-detain" means:

- a) holding a detainee or prisoner in the custody of the DDOC without just cause more than 12 hours after an order from a court has been forwarded to COR ordering the detainee or prisoner's release; or
- b) holding a detainee or prisoner past the day that their sentence has expired and there is longer just cause for their incarceration.

44. "Release Date" for each detainee or inmate is the day on which the person is entitled to be released by court order or the date on which their sentence has expired.

45. "Exit Date" for each detainee or inmate is the day on which the person is actually released from the custody of the DDOC.

46. Plaintiff Philip A. Wharton was admitted to Sussex Correctional Institution (SCI) on or about 6/27/12. His release date was supposed to be 7/9/12, however his exit date was 7/18/12, resulting in a nine day over-detention.

47. Plaintiff Joseph Roundtree was admitted to Howard R. Young Correctional Institution (HRYCI) on or about 4/4/12. His release date was supposed to be 4/17/12, however, his exit date was 4/24/12, resulting in a seven day over-detention.

48. Plaintiff James Maddox was admitted to SCI on or about 3/11/12. His release date was supposed to be 3/14/12, however, his exit date was 3/19/12, resulting in a five day over-detention.

49. Plaintiff Lamar Correa was admitted to JTVCC on or about 8/12/12. His release date was supposed to be 8/15/12, however, his exit date was 9/11/12, resulting in a 27 day over-detention.

50. Asia Trimball was admitted to Baylor's Women's Correctional Institution (BWCI) on or about 6/8/11. Her release date was supposed to be 12/22/12, however, her exit date was 1/6/12, resulting in almost 15 days of over-detention.

51. Richard Haley, Jr. was arrested on October 18, 2011 for allegedly violating a no-contact order, which had in fact been lifted some time in September, 2011. Despite the fact that he repeatedly asked correctional officers and counselors to inquire for him concerning the fact that his no contact order had been lifted, they refused to do so.

52. It was not until the first week of November, 2011, when Mr. Haley met with the public defender, that the Court learned that the no-contact order had been lifted, at which time, Plaintiff Haley was released from prison, ending his approximately 14 day over-detention.

53. On 11/7/11, Quinton D. Lowman appeared in Kent County Court of Common Pleas in front of Judge Anne Hartnett Reigle at which time he was sentenced to 12 months of Level V incarceration suspended for 30 days at Level IV SVOP, thereafter, by Level III probation for 12 months. However, instead of being held for 30 days at SVOP, Mr. Lowman was held for 64 days at Level V due to the failure of COR and DDOC to correctly apply his sentence before being sent to probation Level III, resulting in 34 days of over-detention.

54. Ray Wood was admitted to SVOP on or about 6/6/11. His release date was supposed to be 7/21/11, however, his exit date was 9/29/11, resulting in 68 days of over-detention.

55. Sean Snyder was admitted to HRYCI on or about 1/21/11. His release date was supposed to be 1/25/11, however, his exit date was 2/18/11, resulting in 24 days of over-detention.

56. Chris Rosendale was admitted to a DOC prison, on or about 12/6/10. His release date was supposed to be 12/6/10 at 1:00 pm, however, his exit date was 12/7/11 at 3:00 pm, resulting in 26 hours of over-detention.

57. Nairobi Wannamaker was admitted to JTVCC on or about 9/8/10. His release date was supposed to be 9/9/10, however, his exit date was 9/16/10, resulting in 8 days of over-detention.

58. Tobias Adams was admitted to SCI on or about 7/20/10. His release date was supposed to be 8/5/10, however, his exit date was 8/22/10, resulting in 14 days of over-detention.

59. Thomas Talbert was admitted to HRYCI on or about 2/3/10. His release date was supposed to be 2/4/10, however, his exit date was 2/23/10, resulting in 19 days of over-detention.

60. Roger Scarborough was admitted to JTVCC on or about 9/16/09. His release date was supposed to be 3/1/10, however, his exit date was 3/6/10, resulting in five days of over-detention.

61. Darryl Brooks was admitted to SCI on or about 10/4/13. His release date was supposed to be 10/14/13, however, his exit date was 10/24/13, resulting in nine days of over-detention.

62. Devon Cannon was admitted to JTVCC on or about 10/17/12. His release date

was supposed to be 10/18/12, however, his exit date was 10/24/12, resulting in six days of over-detention.

63. Andre Daisey was admitted to SCI on or about 3/24/12. His release date was supposed to be 3/26/12, however, his exit date was 4/5/, resulting in ten days of over-detention.

64. Vincent Denney was admitted to JTVCC on or about 8/9/12. His release date was supposed to be 10/5/12, however, his exit date was 10/17/12, resulting in two days of over-detention.

65. Kenneth Guinn was admitted to JTVCC on or about 1/13/12. His release date was supposed to be 4/12/12, however, his exit date was 4/14/12, resulting in two days of over-detention.

66. Henry Horne was admitted to HRYCI on or about 12/7/12. His release date was supposed to be 12/7/12, however, his exit date was 12/11/12, resulting in three days of over-detention.

67. Michael Jackson was admitted to SCI on or about 5/12/13. His release date was supposed to be 9/28/13, however, his exit date was 10/10/13, resulting in thirteen days of over-detention.

68. Barry King was admitted to Gander Hill on or about 9/12/12. His release date was supposed to be 9/28/12, however, his exit date was 10/9/12, resulting in eleven days of over-detention.

69. Scott Mitchell was admitted to JTVCC on or about 9/8/11. His release date was supposed to be 1/8/12, however, his exit date was 1/13/12, resulting in at least three days of over-detention.

70. Charleen Stamm was admitted to SVOP on or about 8/3/12. Her release date was

supposed to be 8/22/12/12, however, her exit date was 8/27/12, resulting in three days of over-detention.

71. Harold Stevenson was admitted to JTVCC on or about 6/1/10. His release date was supposed to be 6/2/10, however, his exit date was 6/17/10, resulting in fifteen days of over-detention.

72. Damon Wilson was admitted to HRYCI on or about 9/26/11. His release date was supposed to be 6/8/12, however, his exit date was 6/20/12, resulting in twelve days of over-detention.

73. Counsel for Plaintiffs has been contacted by or informed of many other individuals who have suffered over-detention, but who have not responded to an invitation to join in a class action. Plaintiffs' counsel has a good faith belief that there are a large number of individuals who have suffered over-detention in the last four years, including many whose over-detention has lasted days, weeks, or even months. Many have other issues that keep them from volunteering as plaintiffs in a civil action, such as other legal entanglements, financial problems, family problems, or citizenship issues and a class action is the only way to protect their rights.

#### THE WELL KNOWN OVER-DETENTION PROBLEM

74. The Defendants have known since at least 2008 that the DDOC has a practice of over-detaining detainees and inmates past their release dates.

75. A Wilmington News Journal written by Sean O'Sullivan on 8/29/08<sup>1</sup>, reported outrage by all four Delaware gubernatorial candidates over the fact that 29 inmates had mistakenly been released in the past year and a half because of DOC errors. Then candidate, and

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<sup>1</sup> Archived at:

<http://pqasb.pqarchiver.com/delawareonline/access/1742752791.html?FMT=FT&FMTS=ABS:FT&type=current&date=Aug+29%2C+2008&author=SEAN+O%27SULLIVAN&pub=The+News+Journal&edition=&startpage=B.1&desc=Politicians+blast+DOC+over+prison+releases>

now Governor, Jack Markell claimed that he would "fix the problem and hold people accountable". Candidate Bill Lee "credited DOC Commissioner Carl Danberg with being the first member of the Minner administration to ever step back and accept responsibility for a problem, acknowledging it exists and telling us what he is trying to do to fix it." According to the article, "Danberg acknowledged the ongoing issues with mistakes in both erroneous releases and inmates over-serving their sentence due to errors by DOC personnel two weeks ago."

76. Furthermore, it was reported that:

This week, the DOC released a follow up list of those who were kept longer than their sentences required. While the early release list covered the past 18 months, DOC officials said they only had data on overstays for the past nine months. According to the latest DOC list, 19 people served at least one extra day or up to 20 days longer than was necessary since December 2007. Twelve of the 19 served one or two extra days. Four inmates overstayed between five and seven days, and two were held for almost two weeks longer than a court had ordered.

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National experts said early and late releases happen routinely across the country, but they were surprised by the high number in Delaware, a comparatively small prison system, over such a short period of time.

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In Massachusetts, which has about twice as many inmates as Delaware, there was a major restructuring, including the ousting of the department's commissioner, after it was revealed last year that 14 inmates, over a four-year period, had been held in error past their release dates. One was held in error for four years.

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Danberg said the situation is "unacceptable" and said he launched a major management reorganization at DOC to centralize the processing of inmate sentences and calculation of release dates in Dover to reduce errors. However, he said the transition has created more confusion in the interim.

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The DOC this week also released the amount the State paid to an inmate who claimed in a Federal civil lawsuit that he was improperly held for 5 years past his release date. Jerome K. Hamilton received \$125,000.00 in September, 2007 to settle his case.



77. Defendants Danberg, Escherich, and McBride have long known that DDOC employees working with release records in COR and elsewhere at DDOC are instructed not to respond to any inquiries by inmates. As a result, an inmate who believes he has been illegally over-detained because of a misinterpretation of his sentence, or a delay in processing his release, has no ability to obtain information concerning the problem from COR. Thus such inmates are denied access to the Courts. The Defendants are aware that the Court will not grant an over-detained or illegally incarcerated inmate relief unless they provide the Court the information, which DDOC refuses to provide directly to inmates.

#### DDOC OBLIGATIONS AND POLICIES

78. A person arrested and charged with a crime in Delaware may be released on the person's own recognizance or upon the execution of an unsecured personal appearance bond, and that upon such occurrence, the accused shall be released. (11 *Del. C.* §2104 and §2105)

79. DOC Policy 1.4 V, states in part:

It is the policy of the Department of Correction to provide sufficient staff to ensure efficient operations consistent with its mission

80. DOC Policy 4.1 V, states in part:

It is the policy of the Department of Correction to require all decision-making affecting the rehabilitation, housing, discipline, and/or supervision level of offenders or detentioners under the jurisdiction of the Department be fair and equitable.

81. DOC Policy 5.1 V, states:

The Department recognizes that all offenders are entitled to certain basic rights afforded by the Constitution of the United States, as well as Federal and State statutes. Therefore, it is the policy of the Department of Correction to acknowledge and protect basic rights of offenders in its custody.

The Executive Committee, in cooperation with the Attorney General's Office, shall identify all offender's rights including, but not limited to: a safe and healthful living environment, due process for alleged rule violations, freedom of speech and religion, access to the courts and a grievance process allowing for administrative and judicial review.

It will be the responsibility of each bureau chief/section manager to develop procedures, for review and approval by the Commissioner, to insure offender's rights are safeguarded. The procedures should require all staff involved with offenders receive instruction and training specific to this policy and its corresponding procedures.

#### BREACHES OF LEGAL OBLIGATIONS BY DEFENDANTS

82. As Commissioner of DDOC, Defendant Danberg has powers, duties and functions appointed to him by 11 *Del. C.* §6516, as follows:

The Commissioner shall assume full and active charge of the Department, its facilities and services, and is the chief executive and administrative officer of the Department

83. As Commissioner of DDOC, Defendant Danberg has powers, duties and functions appointed to him by 29 *Del. C.* §8903, including, but not limited to, the following:

The Commissioner shall:

(1) Supervise, direct and account for the administration and operation of the Department, its bureaus, subbureaus, offices, functions and employees;

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(3) Appoint such additional personnel as may be necessary for the administration and operation of the Department within such limitations as may be imposed by law;

84. Defendant Danberg knew that under DDOC policies, correctional officers were to "go through whatever they can to find out the answer for the inmate", if the inmate was seeking to obtain information regarding their release status. See *Wilson v. Taylor*, 597 F.Supp.2d 451 (D.

Del. 2009). See also DOC Policy 3.13V. Defendant Danberg knew that in practice, C/Os and counselors rarely assisted inmates with such requests. Defendant Danberg knew that the failure of C/Os and counselors to assist inmates with obtaining release information and the refusal of COR to respond to inmate inquiries, meant that inmates who were illegally over-detained, or illegally kept past the expiration of their sentence, frequently had no way to contest their illegal incarceration, and were thus denied access to the Courts.

85. Defendant Danberg has had actual knowledge since at least 2008 that COR and the other records keeping employees for DDOC, were operating so poorly and inefficiently that:

- a) inmates were frequently over-detained for hours, days, weeks, months and even years past the time that their release order was forwarded to COR.
- b) inmate records were lost, misplaced, or intentionally ignored by COR and other DDOC records keeping staff so frequently that inmates who should have been released were held in custody for hours, days, weeks or even years beyond the time that their sentences had expired;
- c) COR employees and other DDOC record keeping employees routinely refused to respond to any inquiry made by an inmate, and
- d) COR is closed overnight every weeknight, closed for substantial amounts of time on Saturday and Sunday, and closed totally on holidays. This inevitably leads to inmates spending hours and even days over-detained simply because COR is not open.

86. Defendant Danberg, as the commissioner of DDOC, had a duty to correct such known problems, but essentially took no steps to address them, despite knowing that the failure to address them would lead to many inmates being over-detained for substantial amounts of time.

Defendant Danberg has demonstrated deliberate indifference to the well known over-detention problem since at least 2008.

87. Defendant Danberg acted knowingly, intentionally, unreasonably and with deliberate indifference to the longstanding, widespread dysfunction in DOC including the systemic failures of COR, and the systemic problems with C/Os and counselors. As a result of Defendant Danberg's actions, which violated plaintiff's rights under 14 U.S.C. §1983, 11 Del. C. §2104 and §2105, and the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution, plaintiffs sustained the following injuries:

- a) a period of over-detention;
- b) complete loss of their privacy during their over-detention;
- c) extreme mental and emotional stress, anxiety, and pain, past, present and future

88. Defendant Escherich as director of COR, had the duty to implement COR's overall responsibility for all legal aspects of offenders from date of incarceration to release in a way which protected their various civil rights. Defendant Escherich breached her legal obligations when she knowingly failed in her duty to make sure that COR was operating in a manner that did not violate inmates' civil rights.

89. Defendant Escherich had actual knowledge that the record keeping procedures used at COR and by other DDOC employees frequently resulted in inmates being over-detained from a matter of hours to as much as years past the time they were ordered released by a judge, or past the date their sentence expired. She also knew that the DDOC employees working at COR and elsewhere in records keeping always refused to respond to inmates when they inquired about documentation of their release status, thereby making it impossible for inmates who were

over-detained to obtain copies of the documents they needed to prove their over-detention. Defendant Escherich knew that the reduced hours of COR meant that some inmates were destined to spend hours if not days over-detained. Despite this knowledge, Defendant Escherich took no steps to address these problems such as:

- a) providing proper training to the DOC employees who worked at COR and were responsible for processing release papers for inmates;
- b) requiring DOC employees at COR to respond to appropriate requests from inmates who were seeking copies of their release status papers to use in proving they were being over-detained;
- c) hiring enough sufficiently trained staff to accurately and rapidly process release papers;
- d) disciplining those DOC employees who worked at COR and whose failures led to the repeated over-detention of inmates; and
- e) arranging for COR to be open more hours, especially on weekends and holidays.

90. Defendant Escherich acted knowingly, intentionally, unreasonably, and with deliberate indifference to the record keeping problems at COR and elsewhere in DDOC. Her failure to do anything about the record keeping problems contributed to a serious over-detention problem and prevented inmates from obtaining release status information to prove they were being over-detained. As a result of her knowing, intentional, unreasonable and deliberate actions which violated Plaintiffs' rights pursuant to 14 U.S.C. §1983, 11 Del.C. §2104 and §2105, and the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution, plaintiffs have sustained the following injuries:

- a) a period of over-detention;
- b) complete loss of their privacy during their over-detention;
- c) extreme mental and emotional stress, anxiety, and pain, past, present and future

91. Defendant McBride as director of COR, had the duty to implement COR's overall responsibility for all legal aspects of offenders from date of incarceration to release in a way which protected their various civil rights. Defendant McBride breached her legal obligations when she knowingly failed in her duty to make sure that COR was operating in a manner that did not violate inmates' civil rights.

92. Defendant McBride had actual knowledge that the record keeping procedures used at COR and by other DDOC employees frequently resulted in inmates being over-detained from a matter of hours to as much as years past the time they were ordered released by a judge or past the date their sentence expired. She also knew that the DDOC employees working at COR and elsewhere in records keeping always refused to respond to inmates when they inquired about documentation of their release status, thereby making it impossible for inmates who were over-detained to obtain copies of the documents they needed to prove their over-detention. Defendant McBride knew that the reduced hours of COR meant that some inmates were destined to spend hours if not days over-detained. Despite this knowledge, Defendant McBride took no steps to address these problems such as:

- a) providing proper training to the DOC employees who worked at COR and were responsible for processing release papers for inmates;

- b) requiring DOC employees at COR to respond to appropriate requests from inmates who were seeking copies of their release status papers to use in proving they were being over-detained;
- c) hiring enough sufficiently trained staff to accurately and rapidly process release papers;
- d) disciplining those DOC employees who worked at COR and whose failures led to the repeated over-detention of inmates; and
- e) arranging for COR to be open more hours, especially on weekends and holidays.

93. Defendant McBride acted knowingly, intentionally, unreasonably, and with deliberate indifference to the record keeping problems at COR and elsewhere in DDOC. Her failure to do anything about the record keeping problems contributed to a serious over-detention problem and prevented inmates from obtaining release status information to prove they were being over-detained. As a result of her knowing, intentional, unreasonable and deliberate actions which violated Plaintiffs' rights pursuant to 14 U.S.C. §1983, 11 Del.C. §2104 and §2105, and the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution, plaintiffs have sustained the following injuries:

- a) a period of over-detention;
- b) complete loss of their privacy during their over-detention;
- c) extreme mental and emotional stress, anxiety, and pain, past, present and future

94. All Defendants are sued in their individual and official capacities. At all relevant times, all Defendants were acting under color of state law; pursuant to their authority as officials,

agents, contractors or employees of the State of Delaware; and within the scope of their employment as representatives of public entities, as defined in 42 U.S.C. § 12131(1).

95. Defendants Danberg, Escherich and McBride know that they are exposing prisoners to unreasonable risks of over-detention by their failure to correct the dysfunction of DDOC records keeping, especially in the COR and that such exposure will continue until the problems with record keeping and with COR are rectified.

96. Even though defendants Danberg, Escherich and McBride know that COR and the other record keeping departments at DDOC were dysfunctional, they have failed to take reasonable and effective steps to correct the dysfunction resulting in the needless over-detention of many inmates.

97. Defendants' failure to fix the problems in the dysfunctional COR results in needless pain and suffering, to inmates who have been, are or will be over-detained.

98. Defendants' policies, practices, acts, and omissions evidence and constitute deliberate indifference to the serious over-detention problem and violate the Cruel and Unusual Punishments Clause of the Eighth Amendment, made applicable to the States through the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983.

99. Defendants' policies, practices, acts, and omissions place Plaintiffs and the members of plaintiff's class at unreasonable, continuing and foreseeable risk of over-detention.

100. As a proximate result of Defendants' unconstitutional policies, practices, acts and omissions, Plaintiffs have suffered and will continue to suffer immediate and irreparable injury, as a result of their over-detention. Plaintiffs have no plain, adequate or complete remedy at law to address the wrongs described herein. The injunctive relief sought by Plaintiffs is necessary to prevent continued and further injury.



101. Defendants caused the intentional, unjustified over-detention of the Over-detained Named Plaintiffs and all other class members by deliberate indifference to the risk of constitutional injury of over-detention because of dysfunction in DDOC's record keeping departments relating to inmates' detention and release,

102. Defendants, by consciously failing to correct the dysfunction in record keeping by DDOC, especially in COR, have acted and continue to act with deliberate indifference to the ongoing over-detention of members of the over-detention class and have violated their rights under the Eighth and Fourteenth Amendments to the United States Constitution,

103. By continuing to allow DDOC employees, including COR employees to refuse to respond to inmate requests for paperwork concerning their over-detention, Defendants have denied, and continue to deny Plaintiffs' access to the courts and to deny Plaintiff's due process, in violation of their rights under the Fourteenth Amendment to the United States Constitution.

104. Defendants have continuously been deliberately indifferent to the serious problem of over-detention since at least August of 2008.

105. Defendants are liable by virtue of their deliberate indifference under 42 U.S.C. § 1983 for constitutional injuries to the Over-detained Named Plaintiffs caused by their conduct.

106. Accordingly, all Named Plaintiffs and class members are entitled to damages to be determined at trial, and the Over-detention class is entitled to injunctive relief.

107. Since at least 2008, defendants have known that DDOC has a custom of detaining people past their release dates, thereby causing the intentional, unjustified over-detention of the Over-detained plaintiffs and all other class members.

108. Defendants' actions, and failure to act, as described above, directly and proximately and affirmatively were the moving force behind the continuing violations of the

plaintiffs and all other over-detention class members' Fourth, Fifth and Eighth Amendment rights.

109. Accordingly, all plaintiffs and Over-detention Class members are entitled to damages to be determined at trial, and the Over-detention Class is entitled to injunctive relief.

#### IRREPARABLE INJURY AND INJUNCTIVE RELIEF

110. DDOC is over-detaining members of the Over-detention Class which irreparably harms them, even if they are later able to recover compensatory damages.

111. DDOC's over-detaining members of the Over-detention Class has irreparably harmed, and will continue to irreparably harm, members of the proposed plaintiff Over-detention Class, thus making declaratory and injunctive relief necessary.

112. The policy, custom and practice of the defendants is unconstitutional, in that defendants' have knowingly failed to correct the ongoing, unconstitutional DDOC practice of over-detaining inmates.

113. Upon information and belief, COR and the other records keeping departments of DDOC continue to be dysfunctional, causing a significant number of inmates to be over-detained.

114. The continuing pattern of over-detention of inmates will cause irreparable harm to the new and/or prospective members of the Class, an adequate remedy for which does not exist at law.

115. Alternatively, Plaintiffs and members of the Class lack an adequate remedy at law.

116. Plaintiffs and members of the Class would be irreparably injured absent an order from this Court declaring these practices unlawful and unconstitutional.

### DEMAND FOR PUNITIVE DAMAGES

117. The actions of the Defendants detailed herein are outrageous, in that for at least 4 years, Defendants have knowingly allowed COR to be dysfunctional and allowed employees at COR and other DDOC records keeping departments to refuse to provide inmates with the documentation they need to contest their illegal over-detentions, all of which results in numerous inmates being over-detained unnecessarily.

118. It is clear that the Defendants have no respect for the civil rights of individual citizens or for the rule of law. Consequently, an award of punitive damages is necessary to punish the Defendants, and to send a message to them that the requirements of the United States Constitution indeed apply to their practices which have led to the ongoing over-detention problem in Delaware prisons.

### PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court grant the following relief:

1. Grant a jury trial on all claims so triable;
2. Declare that this action may be maintained as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) and Rule 23(b)(3) and certifying the Over-detained Named Plaintiffs as the proper representative of the class consisting of:

(a) Each person who has been, is, or will be incarcerated in any DDOC facility from 8/29/08 up to and until the date this case is terminated; and (b) who was not released, or, in the future, will not be released by midnight on the date on which the person is entitled to be released by court order, or the date on which all basis for his or her

detention has otherwise expired.

3. Declare that Defendants' acts alleged above violate the Fourth, Fifth and Eighth Amendments to the Constitution by over-detaining plaintiffs as alleged herein;

4. Preliminarily and permanently enjoin the Defendants from pursuing the course of conduct complained of herein;

5. Preliminarily and permanently enjoin the Defendants from pursuing settlement directly with any member of the putative Over-detention Class described herein unless that person is represented by counsel;

6. Award all named plaintiffs compensatory and consequential damages in an amount to be determined at trial;

7. Appoint an independent monitor to supervise COR, and report to the court, to ensure that all inmates are released on or before their Release Dates, at the expense of Defendants;

8. Award plaintiffs attorneys' fees and costs incurred in bringing this action under 42 U.S.C. § 1988; and grant such other relief as this Court deems just and proper.

GRADY & HAMPTON, P.A.

/s/Stephen A. Hampton

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Stephen A. Hampton, Esquire  
(Bar ID# 2451)  
John S. Grady  
(Bar ID # 9)  
6 North Bradford Street  
Dover, Delaware 19904  
(302) 678-1265

Date: 6/2/14

Attorney for Plaintiffs.