The Newsletter of North Carolina Prisoner Legal Services, Inc. Volume III, Issue 2, May 2003

NCPLS ACCESS

Four-Point Restraint Policy to Change

by Staff Attorney Elizabeth Hambourger

The Department of Correction will soon issue a new policy governing the use of four-point restraints after two inmates filed lawsuits challenging the way the restraints were used at Central Prison's Unit One. *Goins v. Lee, et al.* (E.D.N.C. 5:01-CT-362-BO); *Alston v. Bennett, et al.* (E.D. N.C. 5:01-CT-648-BO). Plaintiffs complained that they had each been restrained on their backs with their arms chained above their heads for 48 hours.

The lawsuits were filed *pro se*, and the United States District Court for the Eastern District of North Carolina ordered NCPLS to investigate the inmates' claims. The challenged policy provided that the Area Administrator, Institution Head, or a person designated by either official could order inmates restrained for up to 48 hours. Inmates were to be released from restraint every three hours on the first and second shifts to eat and to take care of bodily functions. On the third shift, the restrained inmate had to request release in order to use the bathroom. The investigations revealed that Central Prison officials were using this policy routinely to restrain inmates for the full 48 hours, even if the inmate's behavior improved while he was restrained.

Upon completion of the investigations, NCPLS attorneys Linda Weisel, Susan Pollitt, and Elizabeth Hambourger entered Notice of Appearance and filed amended complaints alleging that the policy was cruel and unusual punishment in violation of the Eighth Amendment and amounted to summary punishment in violation of the Due Process Clause of the U.S. Constitution. Plaintiffs sought to change the policy.

In a settlement reached with the DOC, some meaningful revisions to the policy were agreed upon, including:

- The decision to restrain must be made by the facility head only after a determination that less restrictive efforts at control have failed or would fail;
- Soft restraints must be used to restrain the inmate until such restraints prove ineffective;
- The inmate's hands will be restrained no higher than the sternum (chest) rather than above the head;
- So that the inmate may be released from the restraints as soon as possible, a review of the inmate's placement in restraints will be made by the Officer in Charge

(Continued on Page 2)

In this Issue:

Access is a publication of North Carolina Prisoner Legal Services, Inc. Established in 1978, NCPLS is a non-profit, public service organization. The program is governed by a Board of Directors who are designated by various organizations and institutions, including the North Carolina Bar Association, the North Carolina Association of Black Lawyers, the North Carolina Association of Women Attorneys, and law school deans at UNC, Duke, NCCU, Wake Forest and Campbell.

NCPLS serves a population of more than 33,500 prisoners and 14,000 pretrial detainees, providing information and advice concerning legal rights and responsibilities, discouraging frivolous litigation, working toward administrative resolutions of legitimate problems, and providing representation in all State and federal courts to ensure humane conditions of confinement and to challenge illegal convictions and sentences.

Editor
Patricia Sanders, CLA

PLEASE NOTE: Access is published four (4) times a year.

Articles, ideas and suggestions are welcome: *tsanders@ncpls.org*

Four-Point Restraint Policy to Change

(Continued from Page 1)

(OIC) every two hours to determine if the restraints have had the desired calming effect. The OIC must visually observe the inmate to make this decision. The inmate will be released from the four-point restraints at the earliest possible time when the inmate, in the opinion of the OIC, no longer exhibits behavior that necessitates restraint;

• At every two-hour review, the inmate will be allowed to use the toilet and to stretch briefly;

• The Regional Director and the Division Duty Officer must be notified if the inmate is kept in restraints for more than eight hours.

NCPLS entered Notice of Appearance in *Goins v. Lee, et al.,* on October 1, 2001. In the eleven months prior to that date, there were 25 restraint incidents at Central Prison on Unit One. In the eleven months after October 1, 2001, there were just 6 incidents in which four-point restraints were applied. These lawsuits were instrumental in changing the four-point restraint policy for the entire DOC and improving correctional practices under the policy.

Impact Update: NCPLS Continues to Help Inmates Get Credit For Time Spent in Impact

By Senior Attorney Susan H. Pollitt

Access readers may recall that, in August 2002, the N.C. Supreme Court ruled that the time spent in IMPACT (Intensive Motivational Program of Alternative Correctional Treatment) must be credited against an inmate's activated sentences. *State v. Hearst*, 356 N.C. 132, 567 S.E. 2d 124 (N.C. 2002). Since that decision, NCPLS has worked hard to make sure inmates receive the credit to which they are entitled. The DOC has helped by providing lists of inmates in prison who participated in IMPACT.

NCPLS and the DOC agree that no inmate should spend a single day in prison beyond the lawful term of incarceration. Working with the DOC, NCPLS has been able to identify and get relief for many of our clients. We previously reported that we helped to obtain IMPACT credit for 218 inmates, 63 of whom were immediately released. During March and April 2003, NCPLS paralegals obtained orders for an additional 49 inmates. These inmates received awards of credit totaling 4,486 days. (NCPLS occasionally finds that an inmate is also entitled to additional jail credit during the investigation.) So far, this work has saved our clients more than 19,486 days in prison.

There are still inmates in prison, and some who are entering prison, who have not received credit for the time they spent in IMPACT. Only a judge can award credit for IMPACT. If you went to IMPACT and do not believe you received credit for that time against your active sentence, you can get help by writing to NPCLS. You should act promptly to protect your rights.

General Assembly Considers Temporary Halt to Executions

On April 30, 2003, the North Carolina Senate passed a bill that would halt executions during a two-year study of the death penalty. The bill was introduced by Senator Eleanor G. Kinnaird. It was supported by a coalition of citizens and advocacy groups, including most notably, People of Faith Against the Death Penalty. According to Kinnaird, "This has been one of the most effective grassroots efforts – people who watch the legislative process have never seen anything like it." Supporters collected more than 40,000 petitions in support of the moratorium.

The General Assembly

Supporters of the moratorium are concerned that the death penalty disproportionately affects racial minorities and the poor. Supporters also contend that capital convictions are too often unreliable, as demonstrated by recent cases in which murder convictions have been overturned. District attorneys and others view such reversals as evidence that the system is working and contend that the bill is a "Trojan Horse" designed to eliminate the death penalty.

The State House of Representatives will take up the bill in the weeks to come. House Speaker Jim Black has already expressed support for the measure, and informal counts show that about 40 other lawmakers favor the initiative. A majority vote will require the support of sixty-one Representatives.

If the measure passes, it will go to the Governor, a former district attorney who is on record opposing a moratorium. The Governor has not commented on the specific bill passed by the Senate.

If the moratorium becomes law, a two-year study will be conducted to examine a number of issues, including the reliability of murder convictions, prosecutorial practices regarding the disclosure of evidence helpful to defendants, and whether the death penalty is imposed fairly. There are presently 202 people on North Carolina's death row.

Reep Update: Appeal Filed

By Assistant Director James W. Carter

Readers of ***Access*** may recall that NPCLS filed a class action lawsuit alleging that DOC violates N.C. Statutes by failing to apply earned but unused sentence reduction credits when post-release supervision is revoked. *Reep v. Beck, et al.*, 02 CVS 16880 (Wake County Superior Court). The case was dismissed on mootness grounds by the Honorable Evelyn W. Hill, Superior Court Judge, on February 18, 2003. In March 2003, NCPLS filed a notice of appeal in the case.

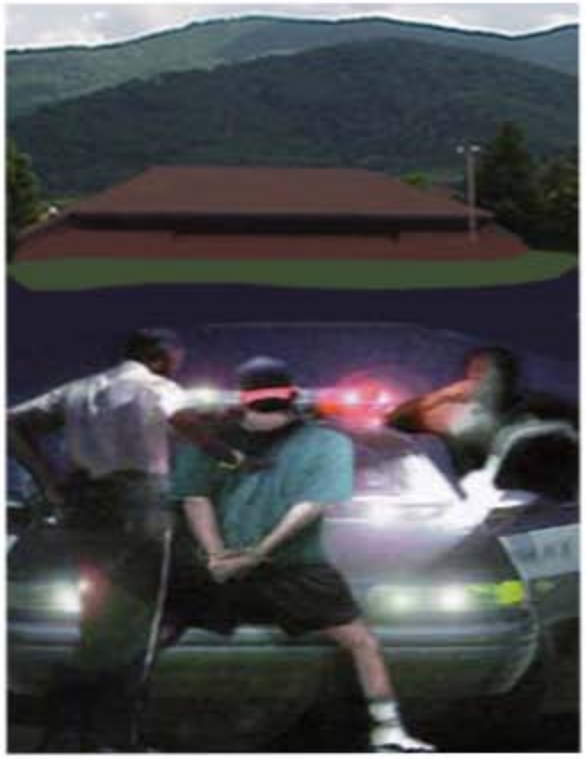
In its brief to the N.C. Court of Appeals, NCPLS argues that the case falls within well recognized exceptions to the mootness doctrine and that the case should be allowed to proceed to a ruling on the merits. The claim presented in this case is, by its very nature, short-lived, and it is unlikely that any given plaintiff could have a legal challenge decided before completion of the term of incarceration imposed upon the revocation of post-release supervision. (In other words, an inmate would complete the sentence before a court could decide the issue.) In the meantime, people who are similarly situated will be subjected to the allegedly illegal actions of the defendants. Thus, the claim is "capable of repetition, yet evading review." NCPLS also argues that the case involves is a matter of public interest and should be promptly resolved.

Developments in this case will be reported in future issues of ***Access.***

Troubled Youth in Crisis: North Carolina's System of Juvenile Justice

Swannanoa Valley Youth Development Center

Last autumn, allegations surfaced that children in custody of the State were being subjected to serious abuse and deprivation at the hands of those charged with their care. An investigation into these allegations generated intense scrutiny of the Swannanoa Valley Youth Development Center, both by attorneys, the press, and by the North Carolina Department of Juvenile Justice and Delinquency Prevention, the Center's "parent agency." As some of these allegations were corroborated, the Department took prompt action to replace the facility's leadership and to correct the problems. Those efforts forestalled institutional reform litigation, but a number of lawsuits were brought on behalf of individual children who had been mistreated and abused. In one case, for example, the parents of one child brought suit to recover monetary damages for the injuries they and their child sustained. *John & Jane Doe 4, individually and as guardian ad litem for John Doe 4, a minor child v. Swannanoa Valley Youth Development Center, et al.*, N.C. Industrial Commission (2002). In the complaint, the parents allege that "the Defendants knew or in the exercise of professional judgment should have known that the lack of sufficient staff, inadequate and inappropriate polices and inadequate and inappropriate training of staff led to a lack of control in the facilities and resulted in the escalation of physical and sexual violence by aggressive juveniles [and predation by staff.]" *Id.* These events drew a great deal of attention and considerable public concern about the way we treat troubled youth.



A Tougher Approach to Juvenile Justice

On July 1, 1999, North Carolina's new juvenile code went into effect. For crimes committed after that date, the new code significantly altered the legal standard that guides proceedings in juvenile court. In the past, actions were based on the best interest of the child. Under the new code, the primary concern is the protection of the community. N.C. Gen. Stat. 7B-1500 and 7B-2500. Two important features of the new code have changed practices in juvenile court. First, juvenile proceedings are no longer guaranteed privacy into adulthood. This means that juvenile adjudications can be used to impose a stiffer sentence in subsequent criminal proceedings. N.C. Gen. Stat. 7B-3000(f). Secondly, the new sentencing grid in juvenile court is based on the juvenile's history of delinquency and imposes limits upon a judge's options for disposition of any particular case. N.C. Gen. Stat. 7B-2507 and 2508. Indeed, in some cases, the code requires a juvenile to be incarcerated for periods longer than an adult convicted of committing the same crime. N.C. Gen. Stat. 7B-2513(a)(3).

Children as young as 10 years of age can be committed to the Department of Juvenile Justice and Delinquency Prevention. N.C. Gen. Stat. 7B-2513(a). And children as young as 13 years of age can be prosecuted as adults. N.C. Gen. Stat. 7B-2200.

Juveniles in Detention

During 2002, nearly 600 juveniles were detained in "development centers." Among this population of children, a high percentage suffers from mental illness, severe emotional disturbance, and serious behavioral problems. "[A] disproportionate number of suicides and attempted suicides by detained juveniles have occurred (as compared with incarcerated adults), and

(Continued on Page 5)

Troubled Youth in Crisis (Continued)

(Continued from Page 4)

children are often extremely distraught about incarceration." *Legal Issues and Liabilities in Juvenile Confinement Facilities*, p. 23, Youth Law Center (1999).

Children who are detained, either pending disposition of charges, or after adjudication, must be provided a range of services, including mental health care. *See, e.g., Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff'd in part and vacated in part*, 679 F.2d 1115 (5th Cir.), *amended in part*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983). *See also*, *Ramos v. Lamm*, 639 F.2d 578 (10th Cir. 1980), *cert. denied*, 450 U.S. 1041 (1981) (where 5-10% of inmates were mentally ill and 10-25% needed mental health treatment, a 2 to 5 week wait for services from mental health staff was constitutionally inadequate).

Basic components of an adequate system for the provision of mental health services include: (1) systematic screening and evaluation of inmates for suicidal ideation and to determine mental health needs; (2) basic treatment services; (3) employment of a sufficient number of trained mental health professionals to meet the need; (4) maintenance of accurate, complete, and confidential mental health records; and (5) the administration of psychotropic medication with appropriate supervision and periodic evaluation. *Coleman v. Wilson*, 912 F. Supp. 1282 (E.D. Cal. 1995). *See also, Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995).

Tough Budgetary Times

In recent years, North Carolina has faced hard times requiring difficult choices for the expenditure of public funds. For example, in 2002, expenditures were slashed by $1 billion, and an additional $946 million in spending was redirected. The cuts largely impacted social services, especially those targeted to people in custody of the State. For example, the Department of Juvenile Justice and Delinquency Prevention sustained budget cuts in excess of $400 million. This year, the Legislature faces a budget deficit that is presently estimated at $1.6 billion, but it could reach $2.2 billion.

In the meantime, a justice system that places over-reliance upon incarceration imposes ever escalating costs. According to the North Carolina Department of Correction, it costs an average of $65.29 per day to imprison an adult offender in 2001. North Carolina has a prison population of more than 33,000, and the North Carolina Sentencing and Policy Advisory Commission projects an increase of about 2% per year for the foreseeable future. Even with significant reductions in recent appropriations, we spend more than $900 million a year on corrections. The increasing population will require millions more in construction and operational costs at a time of fiscal crisis in our State, and across the country.

However, courts have not found budgetary problems to justify the violation of constitutional rights, nor to excuse their remediation. *See Ramos v. Lamm*, 639 F.2d 559, 574, n. 19 (10th Cir. 1980), *cert. denied*, 450 U.S. 1041 (1981); *Wilson v. Seiter*, 501 U.S. 294, 301-302 (1991).

The investment to provide services for incarcerated people is sound public policy, even during tough budgetary times. Countless studies have shown that treatment and education are effective in reducing recidivism and preparing offenders to lead law-abiding lives. An ongoing study being conducted by the Correctional Education Association provides additional support. In its fourth and final year, the study suggests that funds used to provide inmates such services actually save the public twice the cost in reduced rates of recidivism. *Study Finds Value in Inmate Education*, Jamie Stockwell, Washington Post Staff Writer, Nov. 23, 2000, p. M21.

Conclusion

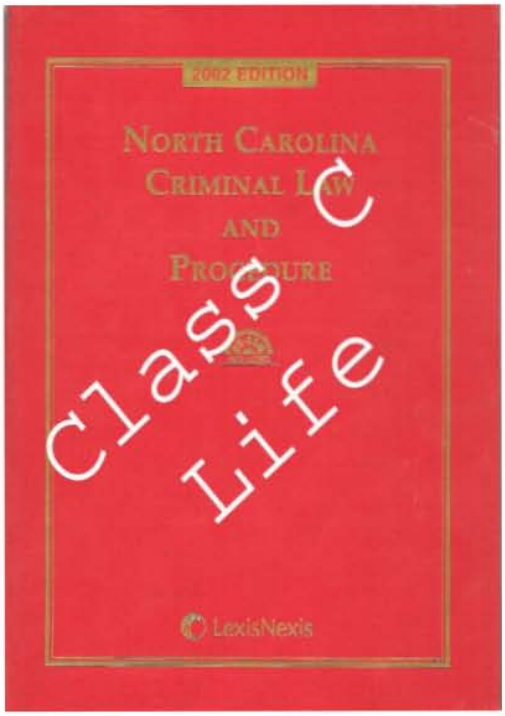
Troubled youth in North Carolina are at a crossroad. At the intersection, the path to a productive life may be blocked by neglect, abuse, mental illness, severe emotional disturbance, serious behavioral problems, or other disabilities. There can be no more productive investment for the people of North Carolina than providing these children the help they need to overcome these obstacles, giving them a chance for a meaningful and productive life.

North Carolina Supreme Court Denies Review of Sentence Reduction Credits for FSA Class C Lifers

By Senior Attorney Susan H. Pollitt

On May 2, 2003, the North Carolina Supreme Court decided not to review the decision of the North Carolina Court of Appeals in the cases of *Teasley v. Beck* and *Bates v. Beck*, ___ N.C. App. ___, 574 S.E.2d 137 (N.C. App. 2002). As *amicus cuirae* (friend of the court), NCPLS had filed a petition urging the North Carolina Supreme Court to review the Court of Appeals decision in *Teasley/Bates*.

The parole eligibility date for a Fair Sentencing Act (FSA) Class C life sentence is reduced by good time, unlike the parole eligibility date for an FSA Class A or B life sentence. In the *Teasley/Bates* cases, the Court of Appeals held that persons serving an FSA Class C life sentence are not entitled to have their parole eligibility dates reduced by gain and merit time they earn. The Court of Appeals held that N.C. Gen. Stat. 15A-1355, and not DOC regulations, is the controlling authority for the application of good time to FSA Class C life sentences. The Court of Appeals held further that the DOC regulations do not entitle persons serving a FSA Class C life sentence to gain or merit time. N.C. Gen. Stat. 15A-1355 concerns the calculation of prison sentences.



Subsection (c) provides:

"(c) (Effecitve until January 1, 1995) Credit for Good Behavior. - The Department of Correction and jailers . . . must give credit for good behavior toward service of a prison or jail term imposed for a felony that occurred on or after the effective date of Article 81A, as required by G.S. 15A-1340.7. The provisions of this subsection do not apply to persons convicted of Class A or Class B felonies nor to persons sentenced to a term of special probation . . .. The Department of Correction and jailers may give time credit toward service of other prison or jail terms imposed for a felony or misdemeanor, according to regulations issued by the Secretary of Correction . . .."

The Court of Appeals also held that the DOC was correctly aggregating parole eligibility for people who have an FSA life sentence followed by a consecutive term-of-years sentence. The DOC only applies sentence reduction credits earned after the life sentence parole eligibility period is met. The plaintiffs in *Teasley/Bates* and NCPLS unsuccessfully argued that this practice amounts to a type of "paper parole," violating the rule announced in *Robbins v. Freeman*, 127 N.C. App. 162, 487 S.E. 2d 771, *aff'd per curiam*, 347 N.C. 664, 496 S.E. 2d 375 (1998).

NCPLS Senior Attorney Linda B. Weisel Honored

Every year, the North Carolina Bar Association's *Outstanding Legal Services Attorney Award* is presented to a legal services attorney making an exemplary contribution to the provision of legal assistance to help meet the needs of impoverished North Carolinians. This year, NCPLS Senior Attorney Linda B. Weisel, has been named a co-recipient of the award.

For almost 17 years, Linda has been an attorney with NCPLS. During that time, she has represented literally thousands of inmates in administrative proceedings and in litigation to improve medical and mental health care, living conditions, and to correct unlawful convictions and illegal sentences. Linda has been involved in federal class action litigation involving complex legal issues, and she has represented clients in all state and federal courts in North Carolina.

(Continued on Page 7)

NCPLS Senior Attorney Linda B. Weisel Honored (Continued)

(Continued from Page 6)

In all of this work, she has been remarkably successful.

Linda is a knowledgeable resource in the law governing the rights of inmates. Her learning extends beyond civil rights and the law governing collateral challenges to convictions to encompass workers' compensation law as it applies to inmates, as well as some aspects of immigration law. Additionally, Linda is highly regarded for her experience in appellate advocacy and her excellent writing skills.

Linda has also accomplished much for our clients through administrative advocacy, and when necessary, through litigation. For example, she successfully represented a class of Hispanic inmates when prison regulations prohibited delivery of letters written in Spanish. In another case, *Richardson v. N.C. Department of Correction*, 345 N.C. 128, 478 S.E.2d 501 (1996), she tried to convince the State Supreme Court that a prisoner who lost his leg when he was injured on a prison job should be permitted to seek damages for negligence, rather than being relegated to the paltry sum of $30 per week provided by the Workers' Compensation Act.

Another example of Linda's outstanding advocacy is the case, *Thebaud v. Jarvis*, No. 5: 97-CT-463-BO, a federal class action lawsuit challenging the delivery of health care services at the North Carolina Correctional Center (NCCIW) for Women. As lead counsel, Linda worked with a number of NCPLS attorneys over a four-year period to address serious problems in the delivery of health services to incarcerated women. In a 30-page complaint, plaintiffs outlined life-threatening deficiencies in the health care services that affected about 30 women, including allegations of prescriptions for contra-indicated medication, systemic breakdowns in continuity of care, and deliberate indifference to the serious medical needs of inmates. Preparing the complaint alone involved countless client interviews and reviewing thousands of pages of medical records and other documents over a period of months. Although the complaint was initially answered with threats of Rule 11 sanctions, over time, Linda and her team were able to demonstrate the existence of serious, life-threatening problems. The lawsuit brought about the resignation of the Director of Health Services, a comprehensive review of policy, procedure, protocol, and the implementation of a number of ameliorative measures. After more than four years of litigation, Linda and present co-counsel, Susan H. Pollitt, employed a creative strategy to settle the case based upon the recommendations of an independent consultant. The parties agreed to hire a physician who had experience in the delivery of health services to inmates, and further agreed to be guided by the expert's recommendations for resolving the remaining issues in the lawsuit. That approach led to further improvements in protocols, policy and procedure in the delivery of women's health care at NCCIW, including changes in pap smear and mamogram policies. This provided the basis for a settlement of the class action litigation. Compliance is being monitored, but it is clear that the team's work in this case has benefited hundreds of women.

More recently, Linda appeared as *amicus curiae* (friend of the court) in *Harris v. Thompson Contractors, Inc.*, No. 122PA02 (NC S.Ct. February 28, 2003). In this case, Linda successfully argued in her brief that an inmate who is injured on a work release job is entitled to the benefits of the Workers' Compensation Act. This victory will benefit literally thousands of inmates as they continue to develop marketable skills and learn the discipline required to succeed in the transition to life in free society.

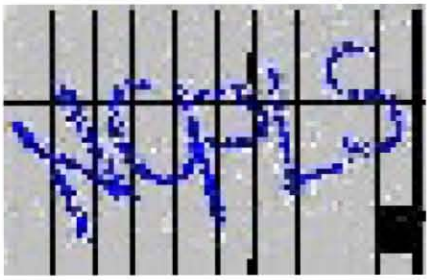
Linda's commitment to social justice can be seen, not only through her work at NCPLS, but also in her involvement in the broader community. For example, she has served as a member of the Board of Directors for the Carolina Justice Policy Center for over a decade.

Linda consistently produces excellent work. She is respected for her knowledge, and is highly regarded for her probing analysis and good judgment. All of these qualities, combined with her long and distinguished service to North Carolina inmates, show that she is an excellent choice for the North Carolina Bar Association's *Outstanding Legal Services Attorney Award*.

THE NEWSLETTER OF NORTH CAROLINA PRISONER LEGAL SERVICES, INC.

224 South Dawson Street
P.O. Box 25397
Raleigh, NC 27611

Phone: (919) 856-2200
Fax: (919) 856-2223
Email: *tsanders@ncpls.org*



Visit our website at: http://www.ncpls.org