

**DISABILITY RIGHTS WASHINGTON**  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DISABILITY RIGHTS WASHINGTON,

Plaintiff,

v.

JAY INSLEE, Governor, State of  
Washington; STEPHEN SINCLAIR,  
Secretary, Washington State Department  
of Corrections; DONALD HOLBROOK,  
Superintendent, Washington State  
Penitentiary

Defendants.

No. 18-5071

COMPLAINT

Plaintiff alleges the following based on information and belief, and  
investigation of counsel.

**I. Preliminary Statement**

1  
2 1. This litigation is brought by Disability Rights Washington as  
3 organizational plaintiff on behalf of its constituents who are inmates with mental  
4 illness held in overly restrictive conditions due to their disability.

5 2. Specifically, inmates with mental illness who are classified as  
6 minimum or medium custody by the Washington State Department of Corrections  
7 (DOC) are being confined in a more restrictive close custody setting in parts of  
8 Washington State Penitentiary’s Baker, Adams, and Rainier (BAR) units, in order  
9 to receive mental health services.<sup>1</sup>

10 3. DOC confines these minimum and medium security inmates in close  
11 custody mental health housing units, irrespective of an inmate’s individual custody  
12 level. Some inmates are housed in these restrictive conditions for years solely due  
13 to their disability, despite being eligible for a far less restrictive setting. This

14  
15 \_\_\_\_\_  
16 <sup>1</sup> The BAR units serve only adult men and are comprised of three separate  
17 units, all of which are run as close custody. Inmates in protective custody are also  
18 held on these units. Baker is comprised mostly of inmates with mental health  
19 needs; Adams is a mix of inmates on protective custody and those in need of  
20 mental health services, or both, while Rainier is almost entirely inmates in  
protective custody.

1 restrictive placement limits inmates' abilities to engage in programming and  
2 recreational opportunities, for which they would otherwise be eligible.

3 4. DOC's discriminatory policy and practice of housing inmates with  
4 mental illness in close custody conditions in the BAR units irrespective of their  
5 actual custody classification violates title II of the Americans with Disabilities Act,  
6 42 U.S.C. §§ 12131-34 ("ADA" or "Title II"), and section 504 of the  
7 Rehabilitation Act, 29 U.S.C. § 794 ("Section 504").

## 8 **II. Jurisdiction and Venue**

9 5. This court has jurisdiction over the subject matter of this action  
10 pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1343  
11 (civil rights jurisdiction).

12 6. Venue in this court is proper pursuant to 28 U.S.C. § 1391(b)(2), as a  
13 substantial part of the events giving rise these claims occurred in this judicial  
14 district, where Washington State Penitentiary is located.

## 15 **III. Parties**

16 7. Plaintiff Disability Rights Washington (DRW), a nonprofit  
17 corporation duly organized under the laws of the State of Washington, is the  
18 statewide protection and advocacy system designated by the Governor of the State  
19 of Washington to protect and advocate for the legal and civil rights of those  
20 residents of this state who have disabilities, pursuant to the DD Act, 42 U.S.C. §§

1 15041-45, the PAIMI Act, 42 U.S.C. §§ 10801-51, the PAIR Act, 29 U.S.C. §  
2 794e, the PATBI Act, 42 U.S.C. § 300d-53, and RCW 71A.10.080(2). As such,  
3 DRW fulfills its federal mandate by providing an array of protection and advocacy  
4 services to people with disabilities across Washington, including the inmate  
5 constituents in this case. DRW is governed by a board of directors comprised  
6 predominantly of people with disabilities and their family members. This board is  
7 advised by two advisory councils, the Disability Advisory Council and the  
8 statutorily mandated Mental Health Advisory Council, also primarily comprised of  
9 people with disabilities and their family members.

10 8. As the protection and advocacy system, DRW has engaged in  
11 advocacy on behalf of people with disabilities for over forty years, and over the  
12 past twenty years, DRW has undertaken significant systemic litigation to protect  
13 the rights of individuals with mental illness and ensure they receive individualized  
14 and appropriate care in the least restrictive setting appropriate to their needs.

15 9. DRW's Amplifying Voices of Inmates with Disabilities (AVID)  
16 Program specifically focuses on advocating for people with disabilities in jails and  
17 prisons. The AVID Program has been recognized across the state and nationally,  
18 and has been asked to present at events for the White House, U.S. Senate, the  
19 national Center on Disability, and at multiple conferences for corrections advocates  
20 and administrators across the country.

1           10. Through what has become its AVID Program, DRW has conducted  
2 numerous monitoring visits to all twelve state prisons and has undertaken  
3 investigations into potential abuse or neglect of prison inmates with disabilities for  
4 over eight years. The AVID Program has received and responded to thousands of  
5 inmate calls during that time and has engaged in advocacy on behalf of dozens of  
6 individual inmates with disabilities, addressing issues such as inappropriate or long  
7 term segregation, access to accommodations, access to adequate medical and  
8 mental health care, and access to programming.

9           11. In 2016, BAR units inmates with mental illness contacted DRW's  
10 AVID Program and reported that they were being improperly held in the units  
11 under close custody status, even if classified as a minimum or medium custody  
12 inmate. In response to these constituent calls, in May 2016, DRW's AVID  
13 Program conducted an investigation and verified these reports through an extensive  
14 document review. In August 2016, DRW sent a letter to Assistant Secretary Robert  
15 Herzog, outlining its concerns. Since that time DRW has met with the DOC to  
16 attempt to resolve this issue on multiple occasions, but has been unsuccessful.

17           12. DRW brings this action as an organizational plaintiff on behalf of its  
18 constituents, DOC inmates with mental illness, who are qualified individuals with  
19 disabilities under Title II and Section 504.  
20

1           13. Courts have regularly found that DRW has associational standing to  
2 represent the interests of people with disabilities, including people held in  
3 correctional facilities. *Trueblood v. Washington State Dep't of Soc. & Health*  
4 *Servs.*, 101 F. Supp.3d 1010, 1020 (W.D. Wash. 2015), *modified*, No. C14-1178  
5 MJP, 2016 WL 4533611 (W.D. Wash. 2016), *vacated and remanded on other*  
6 *grounds*, 822 F.3d 1037 (9th Cir. 2016) (recognizing DRW's associational  
7 standing); *K.M. v. Regence Blueshield*, No. C13-1214 RAJ, 2014 WL 801204, at  
8 \*7 (W.D. Wash. 2014) (holding "DRW has constitutional standing to represent its  
9 constituents-individuals with physical, mental and developmental disabilities in  
10 Washington State."); *see also Oregon Advocacy Center v. Mink*, 322 F.3d 1101,  
11 1109-16 (9th Cir. 2003) (outlining associational standing requirements for a  
12 protection and advocacy system). Because DRW's constituency includes DOC  
13 inmates who have a mental illness, the interests of DRW and the affected  
14 individuals in this case are aligned.

15           14. Defendant Jay Inslee is the Governor of the State of Washington. The  
16 Governor must supervise the conduct of all executive offices and appoint the  
17 Secretary of the Department of Corrections and is therefore vested with the  
18 ultimate authority and responsibility over the state corrections system. RCW  
19 43.06.010(1); RCW 72.09.030. At all times relevant to this action Defendant Inslee  
20 was acting under color of state law and is being sued in his official capacity.

1           15. Defendant Stephen Sinclair is the current Secretary of the Department  
2 of Corrections and is responsible for the operation of all adult state correctional  
3 institutions, including the Washington State Penitentiary where the BAR units are  
4 located. *See* RCW 72.09.050. In that capacity, he is required to exercise all powers  
5 and perform all duties prescribed by law with respect to the administration of  
6 Washington's prisons, including adopting, implementing, and enforcing policies  
7 and procedures that ensure that inmates with disabilities are not discriminated  
8 against while in DOC's custody. He has the authority to direct activities of  
9 subordinate officers and other DOC employees, as well as the authority to identify  
10 capital needs and submit budget requests to the state legislature. DOC has custody  
11 of DRW's constituents. At all times relevant to this action Defendant Sinclair was  
12 acting under color of state law and is being sued in his official capacity.

13           16. Defendant Donald Holbrook is the Superintendent of the Washington  
14 State Penitentiary and is responsible for the day to day operation and management  
15 of that prison, including the operation and management of the BAR units. At all  
16 times relevant to this action Defendant Holbrook was acting under color of state  
17 law and is being sued in his official capacity.

#### 18                           **IV. Statement of Facts Entitling Plaintiffs to Relief**

19           17. The Department of Corrections uses a custody classification system to  
20 assign inmates to the least restrictive custody level appropriate. The initial

1 classification process is set forth in DOC Policy 310.150; the periodic  
2 classification review process is set forth in DOC Policy 300.380.

3 18. The Department of Corrections has six custody levels.

4 19. Maximum custody is segregation and is the most restrictive custody  
5 level. Upon information and belief, inmates in maximum custody are housed alone,  
6 are generally limited to five hours of recreation per week, and do not have access  
7 to most prison programs and services. Maximum custody is generally reserved for  
8 inmates with substantial behavioral issues or those awaiting, or serving time for, a  
9 disciplinary sanction.

10 20. Close custody is the second most restrictive custody status. Inmates in  
11 close custody are unable to leave their cell at will and access to the dayroom is  
12 controlled by correctional officers in a central control booth. Inmates in close  
13 custody are generally locked in their cells for sixteen hours of the day. They may  
14 access the main yard and gym for approximately ten hours per week; access to the  
15 dayroom is limited to approximately sixteen hours per week. Inmates in close  
16 custody have less access to educational programming, recreational programming,  
17 and have fewer job opportunities than inmates at lower custody levels. By statute,  
18 inmates who have been sentenced to the death penalty or life without parole are  
19 generally assigned to close custody. Inmates with known gang affiliations or recent  
20 infractions may also be placed in close custody.

1           21. The BAR units, which are close custody, are in many ways even more  
2 restrictive than other close custody units at Washington State Penitentiary. While  
3 other close custody units at Washington State Penitentiary have access to the dog  
4 training program, the BAR units do not. BAR units inmates also do not have  
5 access to chemical dependency programming, unlike both close and medium  
6 custody inmates located elsewhere in the facility. The educational programming  
7 available in the BAR units is limited to GED preparation, while inmates in other  
8 close custody units at Washington State Penitentiary may access various education  
9 programs, including vocational programs and higher education. BAR units inmates  
10 also have more restrictions on dayroom activities, with limitations on what can be  
11 brought into the general area that are not applied on other close custody units.

12           22. Medium Custody is far less restrictive than either general close  
13 custody or the version of close custody found on the BAR units. Inmates in  
14 medium custody have a key to their cell and can generally come and go  
15 independently. Medium custody inmates are able to access the main yard and gym  
16 almost forty hours per week; they may access the dayroom approximately fifty-six  
17 hours per week. Inmates in medium custody have access to a range of educational  
18 programming and vocational training, meals with the general population, and  
19 increased access to jobs and work training programs.

1           23. Minimum custody is the lowest level of custody and is subdivided  
2 into three levels, MI3, MI2, or MI1, with MI1 being the least restrictive custody  
3 status. Inmates at these custody levels have access to increased programming and  
4 may be eligible for a work camp or work release in the community.

5           24. During initial classification, DOC intake staff conduct an assessment  
6 that includes the inmate's sentence, criminal history, infraction and institutional  
7 history, and programming needs, resulting in a numerical risk assessment and  
8 corresponding custody level.

9           25. After this initial classification, inmates are reassessed at least annually  
10 through the classification review process.

11           26. During each classification reassessment, an inmate's infraction  
12 history, programming needs, and release plan are considered.

13           27. An inmate's mental health is also evaluated as part of the  
14 classification process.

15           28. Male inmates who are assessed as requiring placement in a Mental  
16 Health Residential Treatment Unit are assigned to either the Special Offender Unit  
17 (SOU) at the Monroe Correctional Complex, in Monroe, Washington, or the BAR  
18 units at the Washington State Penitentiary, in Walla Walla, Washington. These  
19 units provide a higher level of mental health services than other DOC facilities.

20

1           29.    The SOU has two maximum custody units, two close custody units,  
2 and two medium/minimum custody units.

3           30.    Thus, all custody levels are available to inmates deemed in need of  
4 residential mental health treatment at the SOU and inmates are generally placed in  
5 the SOU unit that corresponds with their assigned custody level.

6           31.    The BAR units are all close custody.

7           32.    Inmates deemed in need of residential mental health treatment at the  
8 BAR units are housed in a close custody unit, irrespective of their actual custody  
9 classification.

10          33.    Inmates with mental illness who have been classified as medium or  
11 minimum custody are regularly assigned to the BAR units and placed in a close  
12 custody setting, solely in order to receive mental health services.

13          34.    Custody facility plans for inmates with mental illness routinely state  
14 that the inmate is to be retained in the BAR units for mental health treatment.

15          35.    Upon information and belief, in November 2017 there were  
16 approximately 164 inmates in the two BAR units that house inmates with mental  
17 illness.

18          36.    In November 2017, 51 of these inmates were classified as minimum  
19 custody and 19 were classified as medium. Despite these official custody  
20 classifications, all 70 inmates were housed in restrictive, close custody conditions.

1 37. Due to their need for mental health services, these inmates are not in  
2 the most integrated setting appropriate to their needs and are housed in a more  
3 restrictive setting than necessary. Solely due to their disability, these inmates have  
4 limited access to yard, dayroom, educational programming, and job assignments,  
5 all prison programs that they are otherwise qualified to access.

6 38. For example, multiple inmates in the BAR units are under the  
7 jurisdiction of the indeterminate sentence review board and in need of sex offender  
8 treatment before being deemed eligible for release. Sex offender treatment is not  
9 offered to inmates in the BAR units.

10 39. Some inmates in the BAR units are in need of chemical dependency  
11 programming, which is not offered in the BAR units.

12 40. Other BAR units inmates have not been placed in jobs or other  
13 programming that would be available if they were housed at their appropriate  
14 custody level.

15 41. DOC records indicate that one of DRW's constituents, B.S., who has  
16 more than 25 years remaining on his sentence, is currently classified as minimum  
17 custody but is housed in the BAR units under close custody. He reported that he  
18 does not have a job and is locked in his cell for most of the day. He reported that if  
19 he were housed in a minimum custody unit he would have increased access to  
20 JPay, the email and media system used by the DOC, and more access to

1 programming. This inmate has family in Western Washington and would like to be  
2 closer to them. This constituent has been designated as being in need of residential  
3 mental health services and is therefore being housed in the BAR unit.

4 42. F.G., another DRW constituent, is currently classified as medium  
5 custody but according to DOC records, is nevertheless housed in the BAR units  
6 under close custody status “for mental health services.” This inmate reported that  
7 he would like to be placed in a medium custody unit because he would have more  
8 time out of cell and increased access to programming.

9 43. A third DRW constituent, M.N., has been infraction free since 2009  
10 and has been classified as long-term minimum custody. Despite that classification,  
11 he has been housed at the BAR units under close custody status “for mental health  
12 concerns.” This inmate has requested housing at his appropriate custody level but  
13 remains under restrictive conditions, with limited out of cell time and access to  
14 programming, despite his almost decade of infraction-free behavior.

15 44. In a November 2017 interview with DRW, B.T., a BAR units inmate  
16 classified as minimum custody who was previously incarcerated in the  
17 medium/minimum custody units at the SOU, compared the units, noting that in the  
18 SOU’s medium custody unit he had a key to his cell and could come and go freely.  
19 He reported vastly increased access to fresh air and outdoor space while in the  
20 SOU and noted that he had been closer to family and friends, who had visited him

1 almost every weekend. Now at the BAR units, this DRW constituent reports that  
2 he is mainly confined to his room. Notably, while DOC records indicate that this  
3 inmate is in need of sex offender treatment, that programming is not offered at the  
4 BAR units. After more than a year of being confined in the BAR units, upon  
5 information and belief this constituent was finally transferred to the SOU in early  
6 2018. Though he is currently at the SOU, as an inmate with mental illness in need  
7 of residential mental health services, he remains at risk of being placed back into  
8 the BAR units as he has in the past.

9 45. A fifth constituent, D.D., who is currently medium custody reported  
10 that he has been housed in close custody in the BAR units for almost two years.  
11 Like B.T., he had previously been housed in the medium/minimum units at the  
12 SOU and noted the increased freedom available on that unit. Specifically, in the  
13 SOU he reported that inmates ate in the main dining area, unlike the BAR units,  
14 which restricts inmates to their unit even for meals. The inmate reported that due  
15 to the close custody conditions of the unit he spends few hours per day out of his  
16 cell. This inmate was scheduled for release from this restrictive setting in  
17 December 2017 and expected to be placed on a Greyhound bus to Seattle upon  
18 release. Thus, upon information and belief, rather than being provided with the  
19 opportunity to live under fewer restrictions at his assigned custody level, this  
20

1 inmate was released to the community, via bus, straight from the BAR units'  
2 restrictive close custody setting.

3 46. The classification practices that DRW identified in November 2017  
4 persist today, despite DRW's repeated efforts to work with Defendants to address  
5 this issue.

6 47. Due to their disability, DRW's constituents with mental illness in the  
7 BAR units are held in more restrictive conditions than necessary, in violation of  
8 federal law.

9 48. Defendants' policy and practice of placing inmates with mental illness  
10 in the close custody BAR units, irrespective of their individual custody  
11 classification, discriminates against DRW's constituents.

## 12 **V. Federal Financial Funding**

13 49. The DOC receives federal financial assistance, including grants from  
14 the U.S. Department of Justice.

### 15 **Claims for Relief**

#### 16 **Count I:**

### 17 **Violation of the Americans with Disabilities Act and Section 504 of the** 18 **Rehabilitation Act**

19 50. The allegations of the paragraphs above are incorporated herein.  
20

1           51. Plaintiff DRW’s constituents are all inmates with a mental illness and  
2 are therefore “qualified individual[s] with a disability” within the meaning of 42  
3 U.S.C. § 12131(2) and are “otherwise qualified individual[s] with a disability”  
4 within the meaning of the Rehabilitation Act, 29 U.S.C. § 794.

5           52. The Defendants’ policy and practice of housing all inmates in need of  
6 mental health services in the BAR units under close custody conditions,  
7 irrespective of their actual custody classification, denies them the benefit of DOC’s  
8 services, programs, and/or activities and/or subjects them to discrimination on the  
9 basis of disability, in violation of Section 504 and Title II and its implementing  
10 regulations. Such discrimination against Plaintiff’s constituents includes, but is not  
11 limited to:

- 12           a) Failing to administer services, programs, and activities in the most  
13           integrated and least restrictive setting appropriate to the needs of  
14           qualified inmates with mental illness, in violation of 28 C.F.R. §  
15           35.152(b).
- 16           b) Placing inmates in inappropriate security classifications due to  
17           disability, in violation of 28 C.F.R. § 35.152(b)(2)(i).
- 18           c) Confining inmates with disabilities in facilities that do not offer the  
19           same programming as facilities in which they would otherwise be  
20           housed. 28 C.F.R. § 35.152(b)(2)(iii).



- 1 c. Issue an award for Plaintiff’s costs, litigation expenses, and  
2 reasonable attorney’s fees pursuant to 42 U.S.C. § 12205 and 29  
3 U.S.C. § 794a, and other applicable law;  
4 d. Order such other and further relief as this Court may deem just and  
5 equitable.

6 Dated: April 23, 2018.

7 **DISABILITY RIGHTS WASHINGTON**

8 /s/ David Carlson

9 /s/ Heather McKimmie

10 /s/ Rachael Seevers

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15 **Attorneys for Plaintiffs**