



Report on Tomoka Correctional Institution in Daytona Beach, Florida 2013

INTRODUCTION

HEARD's mission is to identify and remove barriers that prevent the deaf from participating in and having equal access to the justice system. HEARD's vision is to create a universally accessible American justice system that equitably serves individuals who are deaf and hard of hearing.

HEARD is in contact with hundreds of Deaf and hard of hearing prisoners throughout the country. In the last three years, it has become apparent that the conditions at the Tomoka Correctional Institution in Daytona Beach, Florida are among the worst in the nation. The reports that we have received depict physical abuse, sexual abuse, extortion, and retaliation against prisoners with disabilities that is so routine and widespread that it is difficult to quantify specific occurrences. Tomoka prisoners report continuous abuse.

What follows is a brief review of the situation, beginning with background on the prison, a few examples of the problems – categorized under the communication access violations, abuse, and retaliation – along with a potential list of violations under the ADA and the Constitution.

BACKGROUND

Tomoka Correctional Institution is located in Daytona, Beach Florida. Tomoka currently houses 1,297 men and employs 393 people. Its maximum capacity is 1,263. Tomoka is a Level 5 facility that houses prisoners in the custody grades of close, medium, minimum and community.

At the time of the drafting of this Report, Tomoka housed around 30 deaf, hard of hearing or deaf-blind prisoners. HEARD has been in communication with deaf prisoners at this facility and deaf prisoners housed at other FL DOC facilities for nearly three years.

According to the DOC website, Tomoka has “wheelchair capabilities” and “hearing impaired capabilities.” Prisoners with physical and sensory disabilities are assigned “Impaired Assistants.” Impaired Assistants are prisoners assigned to assist prisoners with disabilities with whatever needs they may have.

The facility has 8 dorms (six open bay dorms and two cell housing units). At least one of those dorms, J2, is reserved for prisoners with disabilities.

PROBLEMS

I. No Communication Access Provided to Deaf or Deaf-Blind prisoners:

- No TTY access to make calls to family, friends or legal representation (TTY machines are broken or are blocked from connecting to relay operators)
- No interpreters for medical appointments, counseling sessions, or the grievance process
- Hard of hearing prisoners won the right to an assistive listening system in a federal lawsuit – but hearing prisoners have commandeered the system for their own use, because it can charge their illegal cell phones.
- At least five prisoners' hearing aids have been taken "for repairs" and never returned, making the prisoners more vulnerable to attacks
- Guards have thrown away the dry erase boards and markers of two deaf, non-verbal/non-signing prisoners'. The guards refuse to provide pen and paper to them

II. Abuse

- a. Prisoners with disabilities are disproportionately subjected to physical and sexual abuse in prison. Deaf or hard of hearing prisoners cannot hear others approaching, or lying in wait, and frequently cannot call for help or access the grievance process or counselors following assaults. Prisoners with limited vision also are particularly unable to defend themselves from violence and rape because they often cannot identify the assailant or access the grievance process. Prisoners who are deaf-blind find themselves at more risk than both sub-groups. Those who have mobility limitations are less able to defend themselves or escape from attacks. The Prison uses other prisoners to provide the prisoners with disabilities assistance in the basics of living – showering, eating, and communication – so they are even more vulnerable to abuse because they are dependent on these prisoners to survive.
- b. Impaired Assistants tend to resent the role they have been assigned, and respond by abusing, rather than helping, the prisoner with a disability. Many prisoners with disabilities have said they would prefer not to have the assistant, rather than be subject to the abuse.

One Impaired Assistant refused to take a paralyzed prisoner with multiple disabilities to eat for several days. When this prisoner complained to staff, staff informed his Impaired Assistant who pushed this prisoner out of his chair and kicked him repeatedly. This prisoner was taken to medical, denied treatment and sent back to the same dorm with the same Impaired Assistant. Three days later, another prisoner with disabilities carried the paralyzed prisoner to medical and implored them to take x-rays. The x-rays revealed that the paralyzed

prisoner had a broken leg. This injury required an operation and steel rods put in his leg from the knee to the ankle.

Impaired Assistants regularly withhold food so they can eat it themselves or sell it, or just refuse to take their charge to chow. They also refuse to take blind and wheelchair users to the bathroom or shower if the individuals do not perform sexual acts with or other favors for these and other persons.

- c. Prisoners with physical disabilities and those who are blind spend days in their own feces and urine, afraid or unable to leave their cells.
- d. Able-bodied prisoners are given access to the prisoners with disabilities, with the sole purpose, apparently, of allowing them to torment and steal from prisoners with disabilities. For example, one hard of hearing man was beaten almost to death by a band of 6 able-bodied prisoners, and left covered in his bunk for hours.
- e. Guards also abuse prisoners. One guard beat and maced an 80+ year old deaf prisoner for using sign language. He was held in solitary for at least one month with no medical attention.

One guard grabbed the back of a 75 year old, deaf-blind inmate with one leg, and started pulling his chair without identifying who she was. He reached back to get this person to stop and the guard, with handcuffs in hand, beat him on the side of his head, grabbed him by his neck and choked him. Then she wrote him up, alleging that he assaulted her, and he was sent to the hole. As far as the prisoners know, he has been in the hole since April 2013.

- f. Deaf prisoners must pay to have Impaired Assistants with them at medical appointments.
- g. Able-bodied prisoners fill bottles with urine and spray Deaf elderly prisoners (these prisoners are between the ages of 70 and 88 years of age).
- h. Disabled prisoners' clothing is stolen repeatedly. The prison will not replace stolen items and the company that supplies the inmates' shoes, glasses, and other supplies often does not have the names of prisoners with disabilities. Prisoners with disabilities frequently go without shoes, underwear, shirts, sunglasses, etc., for months.

III. Retaliation

- a. When the Department of Justice informed the Florida Department of Corrections that it had opened a formal investigation, officers promised prisoners with

disabilities that they would be maced upon DOJ's departure if they "were caught talking to DOJ."

- b. Prisoners who assist other prisoners with filing grievances or who contact advocates are beaten, raped, and threatened with or subjected to extended terms in solitary confinement.
- c. A week after HEARD sent a letter to the Secretary of the FL DOC, a guard threw the only TTY in the facility to the ground and shouted, "Now try to call someone!" Around the same time, the deaf man who wrote the most detailed of the letters was sent to another camp, and many of the deaf men who were in J2, the dorm for prisoners with disabilities, were split up—sent to dorms for able-bodied, violent offenders.

The most severely disabled prisoner—a deaf-blind prisoner with mental retardation was placed in the worse dorm on the compound alone. He was repeatedly raped and all of his possessions were stolen. The next day, the deaf men who remained in J2 asked a guard to return the deaf-blind prisoner to J2, and the guard allegedly stated, "No. This is for the letter that HEARD sent."

- d. One elderly, blind, asthmatic prisoner filed an informal grievance because staff and prisoners' continuous smoking caused him breathing trouble. Thereafter, a prisoner hit this prisoner over the head, splitting his head open. This prisoner was not punished. In fact, immediately after the elderly, blind prisoner was taken to medical, the offending prisoner went into the officers station and came out and began passing out cigarettes to the dorm. The disabled prisoner was subsequently placed in segregation for "protective custody" purposes and then transferred to another facility in Florida.
- e. When prisoners report Impaired Assistants, staff informs the Impaired Assistant who often further abuses the prisoner. No Impaired Assistant has ever been replaced following a report by any of the men with whom we maintain communication. The only way to get rid of an Impaired Assistant is to forgo this accommodation.

GRIEVANCES

HEARD has in its possession, hundreds of grievances filed by deaf and hard of hearing, elderly and disabled prisoners alleging, among other things physical and sexual abuse, communication access violations, isolation and retaliation.

HUMAN AND CIVIL RIGHTS VIOLATIONS

- 8th Amendment violations –
 - It is common knowledge that able-bodied individuals are allowed into J2 for the purpose of humiliating, robbing, beating and raping prisoners with disabilities
- Violations of the ADA – specific regulations:
 - 28 CFR sec. 35.130 (prohibition against discrimination)
 - 28 CFR sec. 35.130 (b)(7) – (reasonable modification of policies practices and procedures)
 - 28 CFR sec. 35.130 (f) (prohibition on surcharges to people with disabilities)
 - 28 CFR sec. 35.160 (communication access – effective communication requirements and provision of auxiliary aids and services.)

ABUSE AT OTHER FACILITIES IN THE FLORIDA DEPARTMENT OF CORRECTIONS

Other prisons also abuse prisoners with disabilities. Though Tomoka prisoners report the most violent and continuous abuse, we have received reports of abuse of disabled prisoners at eleven facilities in the Florida Department of Corrections.