CAROL SHEA-PORTER
FIRST DISTRICT, NEW HAMPSHIRE

1530 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5456
(202) 225-5822 (FAX)

660 CENTRAL AVENUE
DOVER, NH 03820
(603) 285-4300

Congress of the United States
House of Representatives
Washington, DC 20515

COMMITTEE ON ARMED SERVICES
READINESS
MILITARY PERSONNEL

COMMITTEE ON EDUCATION AND LABOR
WORKFORCE PROTECTION
HEALTH, EMPLOYMENT, LABOR, AND PENSIONS

www.shea-porter.house.gov

May 22, 2018

Civil Rights Division
U.S. Department of Justice
Attn: John M. Gore
Acting Assistant Attorney General
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

I am writing to inquire about the status of the response to a complaint submitted by one of my constituents, State Representative Renny Cushing of Hampton, N.H. The letter (see attached) was originally sent on August 3, 2016. I await your prompt response.

Sincerely,

Carol Shea-Porter

Carol Shea-Porter
Member of Congress

August 3, 2016

Special Litigation Section
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

The undersigned submit a matter of great concern to the Special Litigation Section for investigation. The State of New Hampshire is systematically and intentionally violating the Constitution, as well as the civil rights and civil liberties of a very vulnerable population of its citizenry. The violation is two-fold. First and most outrageously, it is the practice of New Hampshire to place civilly committed individuals deemed to require secure placement in a unit called the Secure Psychiatric Unit (hereafter SPU) in the Men's Prison in Concord, New Hampshire under the jurisdiction of the Department of Corrections. (Exhibits A - C.) To reiterate, these are individuals *committed civilly and in no way connected with the criminal justice system.* This singular practice is engaged in with the justification that New Hampshire's single state hospital is not a sufficiently secure facility to house and care for individuals it deems dangerous to self or others. The state chose to place these individuals within the prison system rather than spend the funds necessary for the hospital to meet the needs of the population, and have since resisted all efforts to remedy this situation.

New Hampshire in fact treats *all* psychiatric patients who require secure placement in the prison's SPU. This includes individuals who are deemed incompetent to stand trial, those found not guilty by reason of insanity, those in the prison population who require psychiatric treatment, and as previously discussed, those transferred to the prison from the state hospital because they require a secure placement. The undersigned are aware of no other state that provides zero beds within a secure psychiatric hospital and solves this by placing both civil and forensic psychiatric patients in prison. It is completely unacceptable to place a forensic patient in need of a psychiatric hospital bed in the SPU; the facility is not a hospital and does not provide the protections or care afforded in a hospital. It is not subject to the Patients' Bill of Rights that any other hospital in New Hampshire would be. (Exhibit D.) It is even more unacceptable that New Hampshire routinely places civilly committed individuals who have not been accused of, charged with, or convicted of any crime in a prison setting, and has done so for over thirty years. Bills have been introduced to prohibit this practice but none have passed. One in 2005 sought to mandate the building of a secure unit at the state psychiatric hospital. (Exhibit E.) The bill led to a study which acknowledged the constitutional issues posed by the SPU and recommended transfer of the care of these psychiatric patients from the Department of Corrections to the Department of Health and Human Services and from the prison location to the New Hampshire Hospital. (Exhibit F.) The plan was supported by the Commissioner of the Department of Corrections, the Commissioner of the Department of Health and Human Services, and the Attorney General. (Exhibit G.) The legislature did not wish to spend the funds necessary to comply and failed to act on the recommendation of its own study. This

200 North Glebe Road, Suite 801
Arlington, Virginia 22203
Phone: 703-294-6001
Fax: 703-294-6010
TreatmentAdvocacyCenter.org

failure left current patients languishing at the Concord prison facility and guaranteed the same fate for future patients, both forensic and civil.

In 2010, a second attempt was made to get the legislature to act on these recommendations with a new bill. (Exhibit H.) The resulting study included the same recommendations for building secure facilities at New Hampshire Hospital and transferring care of SPU patients back to the Department of Health and Human Services. (Exhibit I.) It did not pass. In 2016, a bill was introduced proposing that strictly civilly committed psychiatric patients be treated in secure units of hospitals in neighboring states rather than placing these individuals in prison in the SPU. Some opposing the bill indicated that it would be better to keep patients in New Hampshire *even in prison* rather than to transfer treatment to a secure hospital across state lines. This bill did not pass, but has been referred for yet another study. (Exhibit J.) Nobody has interviewed either civilly committed individuals at the SPU (past or present) or their family members to ask whether they would prefer a hospital in Vermont or Massachusetts to a prison in New Hampshire. The undersigned urges the Special Litigation Unit to do so as part of this investigation, as it may be the only way to gain access to the affected patients in a manner that allows them to communicate without fear of retaliation or reprisal.

The detailed 2010 report explicitly states that people committed to the SPU are comingled with the general population at the Concord prison. (Exhibit H, I.) They are issued prison numbers, their visitors have to go through the same security process as those visiting incarcerated individuals, and the 'treatment' that they receive is not analogous in the slightest way to the level of care received in an inpatient psychiatric hospital. (Id.) A 2015 bill would have allowed for DNA collection from non-forensic, civilly committed individuals for entry into the criminal database. This bill would have made it a misdemeanor with punishment of up to a year in jail to refuse DNA collection, despite it being applied to mentally ill individuals *who had never even been accused of committing a crime.* (Exhibit K.) This facially unconstitutional bill is the only attempt that the New Hampshire legislature has made to address the population at the SPU. The provision subjecting the civilly committed non-forensic patients to DNA testing was fortunately stripped from the bill, but the law that did pass still allows for DNA testing for those found not guilty by reason of insanity and those found incompetent to stand trial. This is concerning, as such individuals have not, by definition, been convicted of a crime but are now subject to DNA collection as if they have been. The bill serves as a stark example of how much the New Hampshire legislature is willing to conflate mental illness with criminality.

The SPU is not an accredited hospital and it thus has no external oversight outside of the Department of Corrections. It does not (cannot) receive Medicaid funds because it is located in a prison, meaning it lacks the oversight and accountability for quality of care that it would have to meet in order to receive federal funds. The unit contains 60 beds and a mix of:

1. State and county prisoners transferred under R.S.A. 623:1,
2. Persons with developmental disabilities committed under R.S.A. 171-B,
3. Persons found NGRI, under R.S.A. 651
4. Persons committed for evaluation of competency to stand trial under R.S.A. 135
5. Persons involuntarily civilly committed to New Hampshire Hospital or SPU under R.S.A. 135-C,
6. Sexually violent predators committed under R.S.A. 135E

(Exhibit H, I.)

Women are housed in the SPU despite it being located in a Men's Prison. Corrections officers staff the facility, and there is comingling in various public spaces of individuals convicted of crimes with civilly committed patients (forensic and otherwise) at the SPU. (Id.)

Officials are aware that this arrangement is unconstitutional and have known that it could be the subject of litigation since at least 2010, when the most recent study concluded that psychiatric patients should be treated at the New Hampshire Hospital under the authority of the Department of Health and Human Services. It is abundantly clear that the New Hampshire legislature will not voluntarily remedy the situation and assume responsibility to provide for the needs of its citizens with mental illnesses. As a result, the undersigned urge the Department of Justice to step in.

The Special Litigation Section previously investigated the mental health treatment system in New Hampshire, entering into a settlement agreement after a finding that the state was abdicating its responsibilities. (Exhibit L.) That settlement agreement does not include any mention of the SPU, and the SPU does not appear to have been part of the investigation. This is a circumstance that raises concerns for the undersigned about whether the state of New Hampshire was forthcoming about the existence of the SPU with officials investigating its mental health system, as it should be part of any such settlement but is not. All mention of the SPU is statutorily coded under the Department of Corrections, and thus it may not have been disclosed to attorneys with the Special Litigation Section even though it clearly is a part of the mental health treatment system in New Hampshire.

New Hampshire has shirked its responsibility to provide appropriate treatment for its citizens with mental illness because of a general resistance to spend the funds necessary to do what two separate legislative studies have suggested:

1. Remove the SPU from the Men's Prison in Concord and relocate it in a new, secure facility or wing within the New Hampshire State Hospital; and

2. Transfer control and responsibility for the SPU from the Department of Corrections to the Department of Health and Human Services.

Those who have been subjected to this outrageous practice have had their rights seriously violated, and it is clear from the legislative studies conducted in 2005 and 2010 that New Hampshire is aware of the violation and has opted to continue with it rather than pay for the facilities to which its citizens are entitled. It is therefore obvious that New Hampshire will not change this practice without federal intervention. We respectfully ask the Special Litigation Section to open an investigation into New Hampshire's Special Psychiatric Unit at the Men's Prison in Concord, New Hampshire.

Respectfully submitted,

Frankie Berger
Director of Advocacy
Treatment Advocacy Center
200 N. Glebe Road Suite 801
Arlington, VA 22203
bergerf@treatmentadvocacycenter.org
Phone: 703-294-6751

Representative Robert Renny Cushing
Criminal Justice and Public Safety Committee
New Hampshire House of Representatives
State House
Concord, New Hampshire 03301
renny.cushing@leg.state.nh.us
Phone: 603-271-2136

Arnie Alpert
Maggie Fogarty
Co-Directors, NH Program
American Friends Service Committee
4 Park St., Suite 209
Concord, NH 03301
aalpert@afsc.org
Phone: 603-224-2407

List of Exhibits:

A: NH Rev. Stat. § 622:40 – 622:48 (Department of Corrections: Secure Psychiatric Unit)
B: West, Nancy, "Lawsuit Likely in NH's Imprisoning of Non-Criminal Mentally Ill Patients," *In Depth New Hampshire*, May 17, 2016.
C: Coulter, Beatrice, "My Turn: The Trouble with New Hampshire's Secure Psychiatric Unit," *Concord Monitor*, February 28, 2016.
D: NH Rev. Stat. Section § 151:19 (New Hampshire's Patients' Bill of Rights)
E: NH HB 382: Chapter 139 (2005).
F: Interim Report on R.S.A. 21-H:14a (HB 382, Chapter 139:1, Laws of 2005) *from* The Commission to Study the Location of the Secure Psychiatric Unit, 2005.
G: Correspondence to The Honorable Joseph E. Stone dated Nov. 7. 2006 from William Wren, John Stephen, and Kelly Ayotte.
H: NH HB 1602: Chapter 96 (2010).
I: Final Report on HB 1602, Chapter 96, Laws of 2010 from the Committee to Study Establishing a Secure Multi-Program Forensic Psychiatric Hospital and Developing a Proposal to Expedite Construction and Operation of Such a Treatment Facility.
J: NH HB 1541-FN (2016) to amend R.S.A. 622:45.
K: NH SB 339-FN (2015) to amend R.S.A. 651-C:2, I
L: New Hampshire ADA Mental Health Settlement Fact Sheet, *Amanda D., et. al. v. Hassan, et. al.; United States v. New Hampshire, No. 1:12-CV-53 (SM).*