EXAMINING ACCESS TO ADEQUATE HEALTHCARE WITHIN NORTHERN MARIANA ISLANDS' JUSTICE SYSTEM

A Report of the
Commonwealth of the Northern Mariana Islands Advisory Committee
to the U.S. Commission on Civil Rights

June 2025

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states, the District of Columbia and the five U.S. Territories and Commonwealths. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. They are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

Contents

Letter of Transmittal 4
Project Overview 5
Background 6
The History of the CNMI Justice System 6
Litigation and Continuing Concerns Post-Termination of the Consent Decree 10
Current Status of the CNMI Department of Corrections 11
Juvenile Probation Program and Juvenile Detention Unit 14
Voluntary Treatment Courts: Mental Health Court and Drug Court 15
Involuntary Medication of Pre-Trial Detainees 16
Sources of Legal Authority Related to Incarcerated Individuals' Rights to Access Health Care 19
Methodology 21
Findings 22
Finding #1: Despite the termination of the 1999 Consent Decree between the United States and the Commonwealth of the Northern Mariana Islands in 2014, CNMI currently falls short of the assurances made under said Consent Decree 22
Finding #2: The overall shortage of healthcare providers, and extreme shortage of mental health care providers, within the CNMI contributes to the CNMI's inability to provide access to adequate healthcare for individuals within the criminal justice system 24
Finding #3: Despite having an on-site medical and psychological unit, DOC inmates continue to face several barriers in accessing adequate healthcare within DOC 25
Finding #4: Because of the challenges that DOC faces in providing inmates with adequate on-site health care, DOC must often send inmates off-site to CHCC—even for routine healthcare services. Despite this makeshift solution, inmates still face barriers in accessing adequate healthcare through CHCC and other external providers 30
Finding #5: The Department of Youth Services, responsible for the probation and detention of CNMI juvenile offenders, faces several barriers in providing juvenile offenders with medical and mental healthcare services 32
Finding #6: Participants of, and individuals seeking to participate in, the Mental Health Court and Drug Court face barriers in accessing adequate mental health care 33
Finding #7: The CNMI fails to ensure that pretrial detainees have access to adequate health and mental health care, as well as ensure pretrial detainees are free from unnecessary medical care 34
Recommendations 37

Letter of Transmittal

U.S. Commission on Civil Rights

Dear Commissioners,

The Commonwealth of the Northern Mariana Islands (CNMI) Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding the access to adequate health care for incarcerated individuals within the Northern Mariana Islands' justice system, as part of its responsibility to study and report on civil-rights issues in the CNMI. The contents of this report are primarily based on testimony the Committee heard during public meetings held via in-person meeting on September 1, 2023; videoconference on October 24, 2023, January 17, 2024, February 21, 2024, and June 5, 2024; and tour of the Department of Corrections prison on May 8, 2024. The Committee also includes related testimony submitted in writing within the Committee's project timeline.

This report begins with a brief background of the issues to be considered by the Committee. It then presents primary findings as they emerged from this testimony, as well as recommendations for addressing areas of civil-rights concerns. This report is intended to focus on civil-rights concerns related to incarcerated individuals' access to health care within the Northern Mariana Islands' justice system. While additional important topics may have surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion.

Sincerely,

CNMI Advisory Committee to the
U.S. Commission on Civil Rights

CNMI Advisory Committee to the U.S. Commission on Civil Rights

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Project Overview

On July 19, 2023, the CNMI Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) adopted a proposal to study the access to adequate health care for incarcerated individuals within the Northern Mariana Islands' justice system. The focus of the Committee's inquiry was to examine whether there is a denial of equal protection of the laws under the Constitution in the administration of justice, as it specifically relates to the right to adequate health care for incarcerated individuals within Northern Mariana Islands' criminal justice system. The Committee sought to consider whether the conditions of the Northern Mariana Islands' prison facility affected incarcerated individuals' access to adequate health care, whether individuals involved in the broader criminal justice system (i.e., pretrial detainees, specialty court participants, etc.) are able to access adequate health care, including mental health care, and whether pretrial detainees are protected from unnecessary involuntary medication.

As part of this inquiry the Committee heard testimony via videoconference held on March 24, 2023; May 4, 2023; September 18, 2023; November 6, 2023; and May 1, 2024.[1] The following report results from a review of testimony provided at these meetings, combined with written testimony submitted during this timeframe. It begins with a brief background of the issues to be considered by the Committee. It then identifies primary findings as they emerged from this testimony. Finally, it makes recommendations for addressing civil rights concerns related to incarcerated individuals' access to adequate health care within Northern Mariana Islands' justice system. While other important topics may have surfaced throughout the Committee's inquiry, matters that are outside the scope of this specific civil rights mandate are left for another discussion. This report and the recommendations therein were unanimously adopted by the committee members present at a meeting on May 14, 2025.

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[1] Briefing records including agendas, recordings, transcripts and other referenced material are available here: https://usccr.box.com/s/vij43nlwtwnn7dznofebgp4apu70drks
Briefing before the Northern Mariana Islands Advisory Committee to the U.S. Commission on Civil Rights, September 1, 2023, (in-person Panel #1), Transcript (hereinafter cited as "*Transcript I*").
Briefing before the Northern Mariana Islands Advisory Committee to the U.S. Commission on Civil Rights, September 1, 2023, (in-person Panel #1), Transcript (hereinafter cited as "*Transcript II*").
Briefing before the Northern Mariana Islands Advisory Committee to the U.S. Commission on Civil Rights, September 1, 2023, (in-person Panel #1), Transcript (hereinafter cited as "*Transcript III*").
Briefing before the Northern Mariana Islands Advisory Committee to the U.S. Commission on Civil Rights, September 1, 2023, (in-person Panel #1), Transcript (hereinafter cited as "*Transcript IV*").
Briefing before the Northern Mariana Islands Advisory Committee to the U.S. Commission on Civil Rights, January 17, 2024, (web-based), Transcript (hereinafter cited as "*Transcript V*").
Briefing before the Northern Mariana Islands Advisory Committee to the U.S. Commission on Civil Rights, January 17, 2024, (web-based), PowerPoint (hereinafter cited as "*PowerPoint V*").
Briefing before the Northern Mariana Islands Advisory Committee to the U.S. Commission on Civil Rights, February 21, 2024, (web-based), Transcript (hereinafter cited as "*Transcript VI*").
Committee Member Debrief of the Northern Mariana Islands Advisory Committee to the U.S. Commission on Civil Rights, May 8, 2024, (web-based), Transcript (hereinafter cited as "*Transcript VII*").
Briefing before the Northern Mariana Islands Advisory Committee to the U.S. Commission on Civil Rights, June 5, 2024, (web-based), Transcript (hereinafter cited as "*Transcript VIII*").

Background

The History of the CNMI Justice System

The CNMI prisons and jails have been under scrutiny for more than three decades. Beginning in 1991, a federal detainee confined in the Saipan Jail initiated a suit against the Director of the Department of Public Safety ("DPS")[2] and others, based on the conditions of his confinement.[3] The court determined on summary judgment that the conditions of the Saipan jail violated the plaintiff's Fourteenth Amendment rights.[4] Subsequently, the Department of Interior requested that the National Institute of Corrections ("NIC") monitor the conditions of the prisons and jails in the CNMI. In 1995, the NIC issued its report finding that the CNMI's prison and jails "do not meet the American Correctional Association Standards, the United Nations Standards, or any other professional standards."[5]

In April 1998, the U.S. Attorney for the District of Guam and CNMI and Chief Judge of the Federal District Court of the CNMI urged the U.S. Justice Department ("DOJ") to investigate the conditions of the prisons and jails in the CNMI.[6] The DOJ, thus, investigated all six detention facilities in the CNMI that existed at the time[7] and found that all of the facilities failed to meet minimum constitutional standards under the Eighth Amendment.[8] On February 23, 1999, the United States filed a lawsuit against the CNMI, pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA").[9] On February 25, 1999, the parties concurrently entered a consent decree (the "Consent Decree").[10] Under the terms of the Consent Decree, the CNMI agreed to, *inter alia*:

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[2] At the time, the Department of Public Safety operated the CNMI's prison and jail facilities. *See* Memorandum, from Steven H. Rosenbaum, Chief, Special Litigation Section to Bill Lann Lee, Acting Assistant Att'y Gen., Civil Rights Division, U.S. Dep't of Just., Recommendation to Investigate the Prison and Jails of the Commonwealth of the Northern Mariana Islands, at 2 (Apr. 7, 1998), https://clearinghouse-umich-production.s3.amazonaws.com/media/doc/8862.pdf.

[3] *Seed v. Hudson*, No. CIV. A. 93–0008, 1994 WL 229096, at *1 (D. N. Mar. I. May 11, 1994), https://clearinghouse-umich-production.s3.amazonaws.com/media/doc/67103.pdf.

[4] *Id*. at *5-6 (explaining "[a]s discussed above, pretrial confinement conditions are analyzed under the due process clause of the Fourteenth Amendment rather than the Eighth Amendment's cruel and unusual punishment standard which is used for convicted prisoners.").

[5] National Institute of Corrections, Federal Bureau of Prisons, *An Assessment of Correctional Services in the Commonwealth of the Northern Mariana Islands* (March 12, 1995).

[6] Memorandum, from Chief Rosenbaum to Att'y Gen. Lee, *supra* note 2, at 1.

[7] The facilities covered under the investigation included the following: the prison on Saipan; the jails on Saipan, Tinian, and Rota; the Juvenile Confinement Facility on Saipan; and the Immigration Detention Facility on Saipan. *See Id*. at 2.

[8] Joint Motion to Terminate Consent Decree at 3, *United States v. Commonwealth of the Northern Mariana Islands*, No. 1:99-cv-00017 (D. N. Mar. I. January 27, 2014), https://www.courtlistener.com/docket/4518902/61/united-states-v-commonwealth-of-the-northern-mariana-islands/. The DOJ and CNMI jointly stated, "[a]s detailed in its August 5, 1998 findings letter, the United States observed the following: staff members were not trained for response in a fire emergency; facilities lacked fire alarms, smoke detectors, sprinklers, and emergency generators; cells were keyed with individual locks, which greatly increased risk in the event of fire; emergency exits were not marked; many cells lacked running water; toilets would not flush; shower areas were covered in mold and mildew; there was poor ventilation and no medical screening, increasing the risk of transmitting infectious diseases like tuberculosis; facilities were antiquated, dilapidated and operating at or near their safe capacity; facilities had inadequate perimeter fencing, poor sight lines, and lacked an adequate maximum security housing area; and inmates and detainees roamed freely, increasing the risk of harm from inmate-on-inmate violence and putting staff at an increased risk of harm." *Id*. at 2.

[9] Complaint at 1-2, *United States v. Commonwealth of the Northern Mariana Islands*, No. 1:99-cv-00017 (D. N. Mar. I. February 23, 1999); *see* Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. §§ 1997-1997j (2018); *see infra* footnotes 163-66 and corresponding text for further discussion on CRIPA.

[10] Consent Decree, *United States v. Commonwealth of the Northern Mariana Islands*, No. 1:99-cv-00017 (D. N. Mar. I. February 25, 1999), https://storage.courtlistener.com/recap/gov.uscourts.nmid.636/gov.uscourts.nmid.636.4.0.pdf; *see* Press Release, U.S.

- install adequate fire and smoke detection systems, provide a system for rapid evacuation of a burning or smoke-filled facility, remove combustible and noxious materials, correct electrical hazards, and provide fire-safety training;
- provide working toilets and sinks to inmates, adequate artificial lighting, and clean and appropriate living spaces and bedding;
- ensure that all food at the facilities is prepared and served in a safe and sanitary manner, and ensure that inmates who are prescribed medical diets receive them;
- provide medical screening of inmates, clean air in the facilities, and appropriate communicable disease training; and,
- provide adequate supervision of inmates, impose strict controls on dangerous implements, provide secure perimeter fencing, and identify and monitor suicidal inmates.[11]

From 1999 to 2009, the CNMI submitted several reports apprising the court of the status of operations and improvements being made pursuant to the Consent Decree.[12] One of the CNMI's "major achievements" included the construction of the Susupe Adult Correctional Facility ("ACF") and Juvenile Detention Unit ("JDU").[13] Construction began in 2002, shortly after the submission of the Consent Decree, and the ACF opened in 2008.[14] In addition, the CNMI renovated existing detention facilities located on Rota and Tinian.[15]

Another "major achievement" was the "development and implementation of policies and procedures, including a [] classification system for inmates."[16] Related to this was the transferring authority over the CNMI prisons and jails from DPS to the Department of Corrections ("DOC").[17]

Dep't of Just., Prisons and Jails in the Northern Mariana Islands to Improve Conditions, Under Justice Department Agreement (Feb. 22, 1999), https://www.justice.gov/archive/opa/pr/1999/February/063cr.htm.

[11] U.S. Department of Justice, *Press Release: Prisons and Jails in the Northern Mariana Islands to Improve Conditions, Under Justice Department Agreement*, Feb. 22, 1999, https://www.justice.gov/archive/opa/pr/1999/February/063cr.htm.

[12] Joint Motion to Terminate Consent Decree, *supra* note 8, at 4.

[13] *Id*. at 3. To clarify, there are 3 separate cell blocks: 1) adult male (including federal detainees), 2) adult female (including federal detainees), and 3) juvenile. These will be collectively referred to as the "CNMI Correctional Facility." 57 N. MAR. I. ADMIN. CODE § 57-20.1-005(a) (2021).

[14] Ferdie De La Torre, "Prison Consent Decree Lifted," *Saipan Tribune* (2014) https://www.saipantribune.com/index.php/prison-consent-decree-lifted/?amp.

[15] Joint Motion to Terminate Consent Decree, *supra* note 8, at 3.

[16] *Id*. The prison operates under a general classification system: 1) Treatment Services, 2) Unrestricted privileges, and 3) restricted privileges. Inmates are assigned a classification depending on their security requirements or behavior. 57 N. MAR. I. ADMIN. CODE § 57-20.1-505 (2021). For example, "Treatment Services" are services to address inmates physical, emotional, psychological or other well-being. 57 N. MAR. I. ADMIN. CODE § 57-20.1-510 (2021). "Unrestricted Privileges" are privileges automatically provided to all inmates unless special security required or there's disciplinary action. 57 N. MAR. I. ADMIN. CODE § 57-20.1-520 (2021). "Restricted Privileges" are privileges provided to inmates with "Good Behavior." 57 N. MAR. I. ADMIN. CODE § 57-20.1-525 (2021).

[17] *See* 1 N. MAR. I. CODE § 2851, Commission Comment (2025).

The legislation established three divisions within the DOC: Division of Civil Detention,[18] Division of Corrections,[19] and Division of Pre-Trial Detention.[20]

Despite these improvements and construction of the ACF, the JDU faced its own sets of challenges. In 2011, a guard at the JDU facility, Tyron Fitial, pled guilty for the enticement of a minor, a 13-year old girl who resided at the JDU facility; specifically, Fitial was accused of using his position at the juvenile detention facility to persuade, induce or entice a minor to engage in sexual activity.[21] The federal prosecution of Fitial raised concerns about whether juveniles at JDU were being adequately protected from exploitation by staff and delayed the termination of the Consent Decree.[22]

Additionally, in 2012, the U.S. Department of Homeland Security's Immigration and Customs Enforcement ("ICE") raised concerns about inadequate healthcare services for federal detainees at the ACF, prompting the transfer of some inmates to Guam and Hawaii.[23] The CEO of the Commonwealth Healthcare Corporation (the "CHCC")[24] confirmed ICE's concerns about inadequate healthcare service for federal detainees.[25] CHCC identified the following areas of concern: dental services, medical records organization, medical consent forms, medical staffing, diabetic supplies, and mental health assessment.[26]

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[18] The Division of Civil Detention "shall be responsible for: [t]he administration, maintenance, and operation of the secured housing of all aliens detained pursuant to the Commonwealth Entry and Deportation Act, as amended; and [t]he administration, maintenance, and operation of the secured housing of all persons ordered by the court to be committed for contempt or for civil commitment grounds as provided by law." 1 N. MAR. I. CODE §§ 2872(a)-(b) (2025). Under an agreement between Immigration and Customs Enforcement (ICE) and CNMI, the CNMI Saipan facility houses federal detainees. U.S. GOV'T ACCOUNTABILITY OFF., GAO-11-805T, COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS: STATUS OF TRANSITION TO FEDERAL IMMIGRATION LAW (2011) (statement of David Gootnick, Director of International Affairs and Trade), https://www.gao.gov/assets/gao-11-805t.pdf. The agreement, effective April 20, 2011, includes, in addition to bed space, services that the CNMI detention center will provide when receiving and discharging ICE administrative detainees as well as basic needs, financial liability, transportation, and medical services for detainees and office space for ICE officials at the Saipan detention facility. STATUS OF TRANSITION TO FEDERAL IMMIGRATION LAW, *supra*.

[19] "The Division of Corrections shall: [e]stablish, maintain, operate and control the adult correctional facility within the Commonwealth for the protection of the general public and crime victims, and for the care, custody and discipline of persons convicted of offenses against the Commonwealth." 1 N. MAR. I. CODE § 2882(a) (2025) (emphasis added).

[20] The Division of Pre-Trial Detention "shall be responsible for the care, custody and discipline of persons arrested for and charged with offenses against the Commonwealth." 1 N. MAR. I. CODE § 2862 (2025) (emphasis added). "That responsibility shall be exercised in coordination with the Division of Adult Corrections within the Department of Corrections and with the Police Division of the Department of Public Safety." 1 N. MAR. I. CODE § 2862, *supra*.

[21] "Judge Manglona imposes 15-year jail term on Tyron Fitial," *Marianas Variety* (June 5, 2012) https://www.mvariety.com/news/local/judge-manglona-imposes-15-year-jail-term-on-tyron-fitial/article_d8e8f56c-b047-56e3-989b-9f2cf301d8a8.html; *see* Ferdie de la Torre, "Ex-Guard Gets 15 Years in Prison," *Saipan Tribune* (June 6, 2012) https://www.saipantribune.com/index.php/ex-guard-gets-15-years-in-prison/.

[22] According to the 2014 Joint Motion, Fitial's prosecution evidently delayed the parties from filing a joint motion to terminate the consent decree earlier. Joint Motion to Terminate Consent Decree, *supra* note 8, at 5-6.

[23] Haidee V. Eugenio, "Feds Cite Health Concerns for its Detainees at Saipan Prison," *Saipan Tribune* (June 13, 2012) https://www.saipantribune.com/index.php/feds-cite-health-concerns-for-its-detainees-at-saipan-prison/.

[24] At the time, CHCC was contracted to provide medical care to DOC inmates. *See* Joint Motion to Terminate Consent Decree, *supra* note 8, at 4 n.3. CHCC is a state agency and sole hospital that provides majority of the healthcare and public health services throughout CNMI, including satellite clinics on Tinian and Rota. *The Insular Areas Medicaid Cliff: Oversight Hearing Before the H. Comm. On Nat'l Res.*, 116th Cong. 2 (2019) (statement by Esther Muna, Chief Executive Officer), https://www.congress.gov/116/meeting/house/109536/witnesses/HHRG-116-II00-Wstate-MunaE-20190523.pdf; *see* U.S. Dep't of Health and Human Services, *Commonwealth Healthcare Corporation: Grantee Details* https://opa.hhs.gov/grant-programs/title-x-service-grants/current-title-x-service-grantees/commonwealth-healthcare#ftn1 (last visited May 27, 2025).

[25] Haidee V. Eugenio, "Feds Cite Health Concerns for its Detainees at Saipan Prison," *Saipan Tribune* (June 13, 2012) https://www.saipantribune.com/index.php/feds-cite-health-concerns-for-its-detainees-at-saipan-prison/.

[26] Ibid.

Attorneys for the CNMI began taking steps towards terminating the Consent Decree in 2013, such as holding more frequent status report hearings with the court. On January 27, 2014, the parties filed a Joint Motion to Terminate the Consent Decree (the "Joint Motion").[27] Interestingly, the Joint Motion states:

> "The Commonwealth has been responsive to the United States' recent concerns about the continued provision of medical care to inmates by the Commonwealth Healthcare Corp.[], and the United States is now satisfied by the Commonwealth's representation to the Court that such care will continue unabated."[28]

Footnote 3 of the Joint Motion further clarifies:

> In its October 2013 status report, the Commonwealth stated, "the Fiscal Year 2014 Budget includes an appropriation to [CHCC] to cover the costs of medical care for DOC." . . . To clarify, the 2014 Budget Act does not specifically state what portion of the monies provided to [CHCC] must be used for DOC inmates. Rather, the representation was based on the Governor's Budget Proposal and the Legislature's act to allocate a $2 million subsidy to help defray a variety of [CHCC]'s costs including care for the Commonwealth's indigent population and inmates at DOC. The parties have discussed this issue, and in light of [CHCC]'s continuing commitment to provide medical care to DOC inmates, do not believe that the specific breakdown of CHC's budgetary allocations is necessary to support closure of the Consent Decree.[29]

On April 30, 2014, a final report was submitted to the Court demonstrating how CNMI had complied with the Consent Decree requirements.[30] On May 20, 2014, the court granted the Joint Motion finding that the CNMI had substantially complied with the terms of the Consent Decree.[31] At that time, the DOJ still had reservations about the provision of medical care to inmates by CHCC, but the Consent Decree was terminated based on CHCC's "continued commitment to provide medical care to DOC inmates."[32] Since the termination of the Consent Decree in 2014, there has not been any formal follow-up investigation or report conducted on the status of the CNMI correctional facilities nor the provision of care to DOC inmates.[33]

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[27] Joint Motion to Terminate Consent Decree, *supra* note 8, at 4 n.3.
[28] *Id*. at 4 (emphasis added).
[29] *Id*. at 4 n.3 (emphasis added).
[30] Status Report, *United States v. Commonwealth of the Northern Mariana Islands*, No. 1:99-cv-00017 (D. N. Mar. I. April 30, 2014), https://usccr.box.com/s/35cznh01x81yak9uku29w5cbvspe4tfq.
[31] Order Granting Joint Motion to Terminate Consent Decree at 2, *United States v. Commonwealth of the Northern Mariana Islands*, No. 1:99-cv-00017 (D. N. Mar. I. May 20, 2014), https://storage.courtlistener.com/recap/gov.uscourts.nmid.636/gov.uscourts.nmid.636.67.0.pdf
[32] Joint Motion to Terminate Consent Decree, *supra* note 8, at 4 n.3.
[33] Additionally, according to the American Correctional Association's website, there are currently no accredited correctional facilities within the CNMI. *See* Search ACA Accredited Facilities, AMERICAN CORRECTIONAL ASSOCIATION https://www.aca.org/ACA_Member/ACA/ACA_Member/Standards_and_Accreditation/SAC_AccFacHome.aspx?5940f470ebf4=2 (search facility located in field for "Northern Mariana Islands" and follow "find" hyperlink).

Despite the joint representations made by the parties that the CNMI substantially complied with the terms of the Consent Decree, some of the concerns originally cited to in the DOJ's 1999 lawsuit reportedly still exist.[34] According to the DOC's 2020 Citizen Centric Report, the DOC's goals and objectives included on-going "legal review of the correctional system's existing laws and policies formulated and approved under the May 20, 2014, Final Termination of the Consent Decree."[35] As it relates to healthcare, DOC's goal was to "fully staff the Medical Unit with a Physician and Nurse to provide regular and/or urgent medical care/attention for inmates."[36] These two goals were repeated in the DOC's 2021 and 2022 Citizen Centric Reports.[37]

Litigation and Continuing Concerns Post-Termination of the Consent Decree

Shortly after the ACF opened and after the termination of the Consent Decree, inmates, again, faced challenges around receiving timely and adequate medical care.[38] Individuals who were incarcerated at the time report that access to medical care began to decline due to staff shortages and lack of funding.[39] Those seeking to access mental health services or dental care often were denied the care they sought.[40] Also, concerns around the prison conditions continued to exist, including lack of running water in certain cells, lack of cleanliness and cleaning supplies, failure to separate detainees or inmates that are high-level security risks.[41]

According to his Third Amended Complaint filed in *Manila v. Guerrero*, Inmate Reynaldo Manila ("Manila") alleged violations of his Eighth Amendment right to adequate medical care.[42] Manila was diagnosed with retinal detachment sometime before November 2015 and, finally, received off-island treatment in January 2016 after multiple letters from eye doctors and lawyers.[43]

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[34] *See* Department of Corrections, *Citizen Centric Report* (2021), p. 4, https://www.opacnmi.com/oockuvoa/2021/11/Department-of-Corrections-FY-2021-CCR.pdf; Department of Corrections, *Citizen Centric Report* (2022), p. 4, https://www.opacnmi.com/oockuvoa/2022/11/Department-of-Corrections-FY-2022-CCR.pdf.

[35] Department of Corrections, *Citizen Centric Report* (2020), p. 4, https://www.opacnmi.com/oockuvoa/2020/12/DOC-FY2020-Citizen-Centric-Report.pdf. In its 2020 Citizen Centric Report, DOC states that another goal was to apply for federal funding to "urgently address existing inoperable or unreliable building maintenance systems… These systems include… Fire Alarm and Sprinkler System, … Security Surveillance System, … Touch Screen Security Control System." Ibid. Many of these goals were "achievements" listed in the Order Granting Joint Motion to Terminate Consent Decree:

> Among these achievements, the Court notes that the Commonwealth constructed new, modernized juvenile and adult facilities with integrated fire safety mechanisms; developed and implemented comprehensive policies and procedures for the facilities; instituted training programs for officers; and installed video-monitoring surveillance at its primary facilities. Order Granting Joint Motion to Terminate Consent Decree, *supra* note 32, at 2.

[36] *Id*.

[37] Department of Corrections, *Citizen Centric Report* (2021), p. 4; Department of Corrections, *Citizen Centric Report* (2022), p. 4.

[38] *See Camacho v. CNMI Dep't of Corr.*, No. 18-cv-00008, 2019 WL 392376, at *2 (D. N. Mar. I. Jan. 31, 2019) (DOC officials allegedly delayed inmate medical treatment after he suffered a heart attack) and *Ray v. Attao*, No. 1:18-cv-00017, 2018 WL 6837746, at *1 (D. N. Mar. I. Dec. 31, 2018) (DOC allegedly subjected inmate to unnecessary solitary confinement and failed to provide adequate mental health care to inmate).

[39] Aldon Testimony, *Transcript I*, p. 19-20.

[40] Aldon Testimony, *Transcript I*, p. 18; Mendiola Testimony, *Transcript I*, p. 16. Prisoners seeking dental care for a toothache were denied care to treat the toothache and, instead, were told the DOC policy was to simply extract the tooth. Ibid.

[41] Aldon Testimony, *Transcript I*, p. 18; Mendiola Testimony, *Transcript I*, p. 11-12.

[42] Third Amended Complaint at 1, *Manila v. Guerrero*, No. 1:18-cv-00003, 2019 WL 2064713 (D. N. Mar. I. 2019). This case included 2 causes of action against Robert Guerrero and Jose Pangelinan for not providing Manila with surgery to repair a detached retina, as well as another claim against Georgia Cabrera for the failure to provide Manila with cataract surgery. *See* Berline Testimony, *Transcript VI*, p. 2-6 for in-depth discussion on the facts of the Manila case.

[43] Third Amended Complaint, *supra* note 42, at 1-2.

Complications arose and Manila required additional cataract surgery, which DOC Commissioner Georgia Cabrera refused to authorize. Manila eventually became blind in his left eye and alleged that he had to wait over a year for surgery on his cataracts.[44] Several issues arose during the settlement between the parties, including DOC's attempt to commute Manila's sentence before his case was resolved[45] and a law preventing the indemnification of CNMI employees who violate constitutional provisions like the Eighth Amendment;[46] the court, however, did eventually help the parties to settle.[47]

In 2018, fifteen inmates initiated a class action against the DOC Commissioner and Director alleging violations of their Eighth and Fourteenth Amendment rights based on the denial and delay of various health care services (medical, mental health, dental and eye care).[48] This case was later dismissed after the parties entered into a settlement agreement (the "Aguon Settlement Agreement").[49] According to the terms of the Aguon Settlement Agreement, the DOC agreed to employ a medical doctor to provide on-site medical care at the ACF beginning on or about September 1, 2018.[50]

In 2021, Godfrey Mendiola, a CNMI DOC inmate, sued numerous DOC officers and officials for alleged violations for failing to provide adequate medical, dental, and mental health care, sanitary conditions of confinement, protection from violence by other inmates, and protection from sexual harassment.[51] The court found that Mendiola stated a plausible § 1983 deliberate medical indifference claim against a total of at least thirteen DOC officers and officials.[52] While the merits of the case are yet to be decided, the details provided in Mendiola's complaint provides some insight into the alleged current conditions within the Adult Correctional Facility.[53]

Current Status of the CNMI Department of Corrections

DOC continues to house local pretrial detainees, local inmates, and federal detainees (including Immigration and Customs Enforcement (ICE) detainees) at its primary facility in Saipan.[54] Short-term detention centers exist on Tinian and Rota, but lack stationed DOC employees and do not have the capacity to provide medical services.[55] As of November 6, 2023, DOC housed 174 detainees and inmates, including 165 adult males, nine adult females, and no

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[44] *Id*. at 6.
[45] Berline Testimony, *Transcript VI*, p. 8.
[46] Ibid. at 5. The CNMI assistant AG representing defendants would not participate in any settlement discussions and stated that the AG's Office could not contribute any money to settle the case. Ibid.
[47] Ibid. at 6. The court never ruled on whether DOC Commissioner Cabrera violated Manila's Eighth Amendment right to medical care by refusing to authorize cataract surgery. Ibid.
[48] Complaint, *Aguon v. Attao*, No. 1:18-cv-00018 (D. N. Mar. I. June 1, 2018), https://usccr.box.com/s/femxovzqoaxyb0qucc7sogha7ej69v8d.
[49] *Id*.
[50] *Id*.
[51] Screening Order Granting Plaintiff's IFP Application, *Mendiola v. Attao*, No. 1:21-cv-00028 (D. N. Mar. I. 2021), https://usccr.box.com/s/067hwe574yxpt4yhoietv857v0r48uf6. Although the court did not have jurisdiction to consider the issue, Mendiola claimed that the DOC had breached the 2018 Aguon Settlement Agreement. *See* Settlement Agreement, *Aguon v. Attao*, No. 1:18-cv-00018 (D. N. Mar. I. Aug. 16, 2018), https://usccr.box.com/s/huiyqg4f2lkehenvkv2i18ptrjorgzm4.
[52] Screening Order Granting Plaintiff's IFP Application, *supra* note 51.
[53] *See id*.
[54] Torres Testimony, *Transcript IV*, p. 3.
[55] Ibid. Instead, these short-term detention centers rely on local Department of Public Safety (DPS) staff and nearby health centers for emergency medical care. Ibid.

juveniles.[56] According to DOC Commissioner Torres, about 48 percent (or 84 of 174 total inmates) of incarcerated individuals are diagnosed with condition(s) that require healthcare, and 14 percent (or 24 of 174 total inmates) have mental health care needs.[57]

As it relates to the provision of healthcare, DOC previously partnered with the CHCC to provide in-house medical services, but that agreement ended in 2018.[58] In 2019, DOC hired its own full-time doctor on a vendor contract, who works alongside three correctional officers assigned to the "medical unit."[59] DOC's Saipan facility provides its own medical care via this medical unit according to the rules and regulations in Title 57 ("Inmates and Correctional Facility Rules and Regulations") of the Northern Mariana Islands Administrative Code (NMIAC), as well as DOC's policies and procedures handbook.[60]

Specifically, Commissioner Torres reports that the facility uses a medical care referral process to evaluate inmate health concerns.[61] An illness, injury, symptom, or condition of a serious nature receive immediate expedited attention and these urgent cases are referred to CHCC for emergency care.[62] Non-urgent medical issues are addressed via DOC's triage form, including, but not limited to, requests for prescription refills, follow-up appointments, referrals for an appointment with an eye doctor or dentist, or dietary questions.[63] These requests are attended to with a scheduled appointment with the DOC doctor, referral to CHCC specialists, or referral to a dental or eye clinic.[64] For after-hours emergencies, staff coordinate with Emergency Medical Services, located nearby.[65] If a detainee or inmate requires medical care off-island, CHCCs medical referral services assists with arranging appointments off-island and DOC makes the necessary arrangements to ensure that the inmate detainee can be securely transported to their appointment.[66]

Mental health services for incarcerated individuals housed in DOC have expanded through the use of telehealth, a service first introduced to incarcerated individuals during the COVID-19 pandemic.[67] Telehealth enables incarcerated individuals to receive psychiatric evaluations, individualized therapy, and medication management via video conferencing, reducing delays in treatment.[68] DOC hired two counselors to provide mental health support, and other DOC staff have

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[56] Torres Written Testimony, Nov. 6, 2023, Email, https://usccr.box.com/s/0nvhqez7mmzunxmubq04353al0j18fh2.
[57] Ibid.
[58] Torres Testimony, *Transcript IV*, pg. 4. Prior to 2018, CHCC assigned four registered nurses on a rotational basis to DOC and provided DOC with full-time nurse availability Sunday through Saturday during regular working hours. Status Report, *supra* note 31, at 12. In addition, a CHCC physician made regular on-site visits. *Id*. After the arrangement ended, DOC hired its own doctor on a vendor contract, and he continues to work there 40 hours/week during normal business hours. Torres Testimony, *Transcript IV*, pg. 4.
[59] Torres Testimony, *Transcript IV*, pg. 4.
[60] 57 N. MAR. I. ADMIN. CODE § 57-20.1-201 (2021); Torres Testimony, *Transcript IV*, pg. 4. DOC implements a structured medical intake process that includes health screenings, tuberculosis testing, and staff training on communicable disease mitigation. Torres Testimony, *Transcript IV*, pg. 4.
[61] Torres Written Testimony, Nov. 6, 2023, Email.
[62] Ibid.
[63] Torres Testimony, *Transcript IV*, pg. 4.
[64] Ibid.
[65] Ibid.
[66] Ibid.
[67] Ibid. at 4-5.
[68] Ibid.

received training to identify and refer inmates expressing suicidal thoughts or severe psychiatric symptoms.[69]

Several other improvements and initiatives are underway to enhance DOC's operations. DOC has requested and secured funding for additional medical staff, including at least one registered nurse or physician assistant.[70] Also, the Juvenile Detention Unit has been removed from the Adult Correctional Facility to ensure a safer environment for youth detainees.[71] DOC is also consulting with the Office of the Attorney General, the Criminal Justice Planning Agency (CJPA), and the Office of the Public Auditor to ensure compliance, accountability, and the proper use of resources.[72] CJPA is working with DOC to prepare and develop annual state plan applications for federal funding and will administer any funds that are awarded.[73] Specifically, CJPA and DOC submitted federal grant applications for programs like the Residential Substance Abuse Treatment Program (RSATP), which aims to provide targeted rehabilitation within the facility.[74]

Committee Members observed first-hand Commissioner Torres' improvements to DOC and its facilities, as well as his plans for more programs and improvements to DOC.[75] Committee Member observations include the following: the prison appeared to be clean but still lacked security cameras in certain areas within the ACF facility,[76] DOC has a new outside area with activities like pickleball,[77] and DOC recently partnered with the Northern Mariana Technical Institute to provide opportunities to inmates so they are able to leave prison with skills to reenter the workforce.[78] In addition, Members recall Commissioner Torres' enthusiasm for future plans including using the DOC's state of the art kitchen to make and serve meals to the incarcerated individuals,[79] starting a garden and teaching inmates farming/agricultural skills,[80] and "going green" by educating inmates on recycling and reducing waste.[81] Commissioner Torres also mentioned plans for DOC to partner with the Substance Abuse Addiction Rehabilitation Program (SAARP) to provide social services to inmates reintegrating in society, as well as the Offender Advocacy Program as another transitional support service for inmates.[82]

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[69] Ibid. at 5. Additionally, DOC is exploring evidence-based training programs for its counselors to enhance their effectiveness. Ibid.

[70] Commonwealth of the Northern Mariana Islands Civil Service Commission, Office of Personnel Management, "Continuous Announcement: Correctional Nurse (2 Positions)." (June 21, 2024), https://usccr.box.com/s/myw7xs7z12qqr45ve1kz2zvecbt6f76g.

[71] "CNMI Department of Corrections Unveils New Juvenile Detention Unit," *KUAM News* (May 7, 2024) https://www.kuam.com/story/50752992/cnmi-department-of-corrections-unveils-new-juvenile-detention-unit.

[72] Torres Testimony, *Transcript IV*, p. 5-6.

[73] Ibid. at 6.

[74] Ibid.

[75] The Committee visited the prison on April 12, 2024, and debriefed on their observations at their public meeting on May 8, 2024. *See Transcript VII*.

[76] Bryan Manabat, "Former Inmate Sues Corrections Officials," *Marianas Variety* (Feb. 27, 2025) https://www.mvariety.com/news/local/former-inmate-sues-corrections-officials/article_7b358284-f449-11ef-8dd4-d7acd0a67d90.html; Solomon Testimony, *Transcript VII*, p. 6; Cachero Testimony, *Transcript VII*, p. 8.

[77] Cachero Testimony, *Transcript VII*, p. 4.

[78] Solomon Testimony, *Transcript VII*, p. 6; Cachero Testimony, *Transcript VII*, p. 8.

[79] Cachero Testimony, *Transcript VII*, p. 4; Dotts Testimony, *Transcript VII*, p. 5; Hunter Testimony, *Transcript VII*, p. 6; The DOC kitchen has not been used. Ibid. Instead, DOC previously spent over $600,000 on meals annually because they used outside catering services that delivers food to the prison. Cachero Testimony, *Transcript VII*, p. 8. There has been concerns around whether this food meets nutritional guidelines or accommodates special dietary restrictions. Faisao Testimony, *Transcript VII*, p. 7; Cachero Testimony, *Transcript VII*, p. 8.

[80] Cachero Testimony, *Transcript VII*, p. 7-8.

[81] Hunter Testimony, *Transcript VII*, p. 6; Cachero Testimony, *Transcript VII*, p. 8.

[82] Torres Testimony, *Transcript IV*, p. 6.

Juvenile Probation Program and Juvenile Detention Unit

The Division of Youth Services (DYS) is the only organization providing juvenile offender services in the CNMI and serves juveniles ages 11 and older.[83] DYS oversees several programs for juvenile offenders including the Juvenile Probation Program, Juvenile Diversion Program, as well as Juvenile Detention.[84] DYS takes a holistic approach to juvenile rehabilitation, providing supervision in schools, facilitating treatment team meetings, and offering transportation for juveniles.[85] DYS works closely with both juveniles and their families, including assisting families in relocating to safer neighborhoods to prevent reoffending and supporting access to social services such as the Supplemental Nutrition Assistance Program, Medicaid, and housing assistance.[86]

The Juvenile Probation Program is a community-based correctional system designed to rehabilitate juvenile offenders by reintegrating them into their homes rather than incarcerating them.[87] This approach helps the government save money by avoiding the costs of housing juveniles while ensuring they receive necessary support, such as education assistance, counseling, mental health services, medication, and job placement opportunities.[88] Services such as counseling are contracted through Youth Empowerment Solution (with clinicians from Guam) and the Community Guidance Center.[89]

The Juvenile Diversion Program is designed for first-time non-felony offenders.[90] This program provides an alternative to court, offering a three-month intervention that allows the juvenile to avoid a criminal record if successfully completed.[91] Eligibility is based on factors such as the nature of the offense, prior record, and the juvenile's willingness to accept responsibility.[92] If the juvenile violates the program, the case is referred back to the Attorney General's Office and forwarded to juvenile court.[93]

Juveniles that must be detained are housed under the Juvenile Detention Unit.[94] Prior to 2024, juvenile detainees were housed in a dedicated juvenile wing at the Adult Correctional Facility per the Governor's Executive Order 2004-011.[95] In 2024, the Juvenile Detention Unit was moved from the Adult Correctional Facility to the Manhoben Center in Susupe.[96] It is unclear how juvenile detainees receive medical and mental health care at this new facility.

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[83] DYS consists of four sections: Child Protective Services (focused on victim advocacy), the Family and Youth Enhancement Program (assist with resocializing juvenile offenders), an Emergency Shelter for victims, and Juvenile Probation. Ada Testimony, *Transcript V*, p. 3-4.
[84] Ibid.
[85] Ibid. at 5.
[86] Ibid.
[87] Ibid. at 3.
[88] Ibid. at 4.
[89] Ibid.
[90] Ibid.
[91] Ibid.
[92] Ibid.
[93] Ibid.
[94] Ibid. at 5.
[95] N. Mar. I. Exec. Order No. 2004-011 (Apr. 27, 2011); *see* Department of Corrections, *Citizen Centric Report* (2024), p. 1, https://cnmileg.net/resources/files/Directory/2024%20CCR/DOC%202024%20CCR.pdf. The JDU facility located in Kagman was shut down due to a sinkhole and was moved to a section within the DOC adult correctional facility. Ada Testimony, *Transcript V*, p. 5.
[96] "CNMI Department of Corrections Unveils New Juvenile Detention Unit," *KUAM News* (May 7, 2024) https://www.kuam.com/story/50752992/cnmi-department-of-corrections-unveils-new-juvenile-detention-unit.

Voluntary Treatment Courts: Mental Health Court and Drug Court

As noted in the project proposal, this Committee was interested in investigating whether participants in the Mental Health Court and Drug Court had access to adequate healthcare, including mental health services and substance abuse treatment. The Drug Court and Mental Health Court are specialized judicial programs designed to address the underlying causes of criminal behavior—substance abuse and mental health conditions—through rehabilitation rather than traditional punitive measures.[97] Both courts operate using a plea in abeyance model, meaning participants enter a guilty plea that is held in suspension until program completion.[98] Successful graduates have their pleas dismissed, while those who fail to meet the program's requirements face sentencing.[99]

The Drug Court is a voluntary, structured program aimed at rehabilitating individuals with substance use disorders who meet both legal eligibility and clinical eligibility criteria.[100] The process begins with a referral to the Attorney General's (AG) office, which determines whether the defendant qualifies under specific legal guidelines.[101] Those charged with violent, domestic violence, or sexual offenses are excluded.[102] Clinicians conduct assessments to evaluate treatment needs and risk factors, and the District Court judge makes the final determination on program acceptance.[103]

Participants progress through three phases: 1) stabilization, which focuses on securing housing, food, identification, and healthcare; 2) treatment, which includes individual and group therapy, self-help meetings, and family counseling; and 3) transition, which encourages education, employment, and community reintegration.[104] To graduate, participants must demonstrate at least six months of sobriety, be sanction free for at least 60 days, complete a community service project, and pay off court fees.[105] The program is managed by a collaborative, multi-disciplinary team[106] that meets regularly to ensure participants receive necessary support, monitors curfew and random drug testing to promote compliance.[107]

Similarly, the Mental Health Court, established in July 2021, provides an alternative to incarceration for offenders whose criminal behavior is linked to mental health conditions or intellectual and developmental disabilities.[108] Like Drug Court, participants must meet both legal and clinical eligibility requirements.[109] The process begins with the offender or his/her attorney applying to the Office of Attorney General for a Mental Health Court legal eligibility evaluation, including a competency evaluation.[110] Once the AG determines potential participant is legally

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[97] Su Testimony, *Transcript III*, p. 5; Diaz Testimony, *Transcript V*, p. 8.
[98] Ibid.
[99] Su Testimony, *Transcript III*, p. 5; *see* Diaz Testimony, *PowerPoint V*, slide 31.
[100] Diaz Testimony, *Transcript V*, p. 7; *see* Diaz Testimony, *PowerPoint V*, slide 17.
[101] Diaz Testimony, *Transcript V*, p. 7.
[102] Diaz Testimony, *PowerPoint V*, slide 12.
[103] Diaz Testimony, *Transcript V*, p. 7; Diaz Testimony, *PowerPoint V*, slide 13-14.
[104] Diaz Testimony, *Transcript V*, p. 9-10; *see* Diaz Testimony, *PowerPoint V*, slide 22.
[105] Diaz Testimony, *Transcript V*, p. 10; *see* Diaz Testimony, *PowerPoint V*, slides 30-31.
[106] The Drug Court team includes the Drug Court Judge, Drug Court staff (manager, clerk, case managers, supervision officers), Attorney General's Office, Public Defender's Office, law enforcement (DPS and DOC representatives), and treatment providers (CGC, HOPE Recovery Center, and IIMInc.). Diaz Testimony, *PowerPoint V*, slide 18-19.
[107] Diaz Testimony, *Transcript V*, p. 8. Treatment providers include CGC, HOPE Recovery Center, and IIMInc.
[108] Su Testimony, *Transcript III*, p. 3, 5.
[109] Ibid. at 5-6.
[110] Ibid. at 4. To participate, individuals must meet the following legal eligibility criteria:

eligible, a CHCC psychiatrist completes a psychiatric evaluation to determine whether the participant meets the clinical eligibility criteria.[111]

Participants accepted into the Mental Health Program follow an individualized treatment plan from mental health treatment providers, including therapy, medication management, and life-skills training.[112] Like Drug Court, it emphasizes rehabilitation over punishment, using a collaborative and non-adversarial model where judges, prosecutors, defense attorneys, and mental health professionals work together to support participants.[113]

Traditional incarceration does not effectively address mental illness. Studies show individuals with serious mental illnesses are three times more likely to be incarcerated than hospitalized.[114] Mental health courts reduce recidivism rates by up to 16% compared to traditional court systems, and participants are 58% less likely to be rearrested than those processed through traditional courts.[115] The Mental Health Court aims to break the cycle of repeated incarcerations by providing comprehensive treatment and supervision, improving public safety, and reducing correctional costs.[116]

Involuntary Medication of Pre-Trial Detainees

As noted in the Committee's project proposal, investigating whether incarcerated individuals within the CNMI's justice system had access to adequate healthcare included whether they had protection against improper involuntary medication. Anyone involved in the criminal proceeding (i.e., prosecutor, defense attorney, or judge) can request a competency evaluation for a criminal defendant.[117] According to CNMI law, the standard for determining "competency" at trial or sentencing is "whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him."[118] The defendant must be able to communicate with his/her counsel about the facts of the case, potential witnesses, and strategies for trial (making a plea deal, etc.) and consequences of going to trial.[119]

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1. Must be at least 18 years of age;
2. Must a United States citizen or legal resident;
3. Must be legally competent;
4. Has a pending criminal charge; if there are any restitution fees, the amount is less than $5,000;
5. Must not have been convicted of a dangerous offense within the past 10 years; and
6. Must not have a sentence imposed, which renders the applicant ineligible for probation, whether as a result of plea or a finding of guilt. Ibid. at 6.

[111] Ibid. To participate, individuals must meet the following clinical eligibility criteria:

1. Must have a serious mental health diagnosis, or exhibit symptoms of an undiagnosed serious mental illnesses, or intellectual and developmental disability;
2. Applicants with co-occurring disorders are also accepted so long as the mental health diagnosis is primary;
3. Agree to treatment, take any and all prescribed medication in the manner prescribed, and follow all team treatment recommendations; and
4. Voluntarily agree to participate in the program. Ibid.

[112] Ibid. at 2.
[113] Ibid. at 2, 5.
[114] Ibid. at 2.
[115] Ibid. 3.
[116] Ibid. at 2-5, 7.
[117] Thomsen Testimony, *Transcript VIII*, p. 3; 6 N. MAR. I. CODE § 6606 (2025).
[118] 6 N. MAR. I. CODE § 6603(a) (2025).
[119] Thomsen Testimony, *Transcript VIII*, p. 3.

While CNMI law provides for the opportunity to get a competency evaluation, the law doesn't define how long a competency evaluation will take.[120] If, after a competency evaluation is completed, the defendant is found not competent, there is a hearing within 10 days where the judge will either confirm or reject the competency evaluation.[121] If the court confirms the defendant is not competent and the defendant cannot be made competent via medication, the case is dismissed.[122] On the other hand, if the competency evaluation reports that there is a substantial likelihood that the defendant can be made competent in 90 days (via medication), then the court will stay the legal proceedings and simultaneously attempt to have the defendant regain his/her competency.[123] The 90-day stay can be extended up to a maximum of 180 days.[124] If the defendant is not found competent at the end of the 180 days, their case is dismissed.[125]

In 2022, Aimin Zhang ("Zhang"), a pre-trial defendant, was ordered to be involuntarily medicated in an effort to render him competent to stand criminal trial.[126] Zhang stabbed an individual and was charged with assault with a dangerous weapon, assault and battery, and disturbing the peace.[127] According to his public defender, Emily Thomsen, Zhang was from China, did not speak English, had difficulty understanding even with a Mandarin interpreter, and displayed clear signs of mental health issues and competency issues.[128]

Due to competency concerns, Ms. Thomsen requested a competency evaluation be completed.[129] Zhang's competency evaluation took several months to complete due to a number of reasons, including CNMI psychiatrists refusing to conduct the evaluation based on ethical concerns, requiring a Guam psychiatrist to conduct the evaluation via Zoom and Zhang's unfamiliarity with the technology and general distrust in the competency evaluation process.[130] After several months, a psychiatrist completed Zhang's competency evaluation and determined that Zhang was incompetent but could be made competent in 90 days via medication.[131] The court agreed and stayed the legal proceedings to attempt to have Zhang regain competency.[132]

The prosecution had a strong interest in ensuring Zhang was competent to stand trial because, while Zhang was only charged for assault with a deadly weapon and battery, the victim

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[120] Thomsen Testimony, *Transcript VIII*, p. 4; *see* 6 N. MAR. I. CODE § 6601 et seq. (2025).
[121] 6 N. MAR. I. CODE § 6607(a) (2025).
[122] 6 N. MAR. I. CODE § 6607(g) (2025).
[123] 6 N. MAR. I. CODE § 6607(d) (2025).
[124] *Id*.
[125] 6 N. MAR. I. CODE § 6607(g).
[126] Order Granting the Government's Motion to Involuntarily Medicate Defendant, *Commonwealth of the Northern Mariana Islands v. Aimin Zhang*, No. 22-0031 (N. Mar. I. Commw. Super. Ct. Sep. 2, 2022) https://usccr.box.com/s/x4mhnhm7t9o6qhdrvv42nhj26xgzaejk; *see* Bryan Manabat, "Judge Grants Prosecution's Request for Forced Medication," *Marianas Variety* (Sep. 5, 2022) https://www.mvariety.com/news/judge-grants-prosecution-s-request-for-forced-medication/article_caa36444-2c4b-11ed-b545-7793ba523adc.html.
[127] Thomsen Testimony, *Transcript VIII*, p. 3. Charging documents at the initial hearing alleged Mr. Zhang stabbed someone (later found the victim died, but possibly from unrelated causes). Ibid.
[128] Ibid.
[129] Ibid.
[130] Ibid. at 4. CNMI psychiatrists reportedly believe they're unable to complete competency evaluations for their patients in the CNMI due to ethics concerns. Ibid. The CNMI judiciary, therefore, relies on psychiatrists from Guam to conduct competency evaluations via Zoom. Zhang did not understand nor want to talk to doctors via Zoom. Ibid.
[131] Ibid. at 5.
[132] Ibid. at 4.

later died.[133] Based on the results of the competency evaluation, the prosecution filed a motion under seal requesting the court order that Zhang be involuntarily medicated in order to be deemed competent to stand trial.[134] The contents of the prosecution's motion (specifically, the type of drug and dosage to be administered to Zhang) was, thus, hidden from Zhang's attorney.[135]

After a hearing on the motion, the court ordered the involuntary medication of Zhang based on the government's interest in prosecuting the case.[136] The court's order, again, did not specify the drug or dosage to be involuntarily administered to Zhang and, instead, the court simply stated it deferred to the judgment of the psychiatrist treating Zhang.[137]

Ms. Thomsen attempted to appeal the decision because she alleged the court order violated the *Sell v. United States* standard, but there was no recourse to stay the court's order to involuntarily medicate Zhang.[138] According to the U.S. Supreme Court in *Sell*, the Constitution permits the involuntary administration of antipsychotic drugs to a mentally ill pre-trial defendant in order to competently stand trial.[139] The government must show important government interests are at stake that overrides the defendant's constitutionally protected liberty interest in avoiding involuntary administration of antipsychotic drugs.[140] Forced medication is allowed only if the following elements are met: 1) the defendant faces "serious criminal charges," 2) "the treatment is medically appropriate," 3) the treatment "is substantially unlikely to have side effects that may undermine the fairness of the trial," and 4) "taking account of less intrusive alternatives," the treatment is necessary to further important governmental trial-related interests.[141] Unlike *Sell*, the CNMI government did not disclose which drug or dosage would be administered to Zhang.[142] Ms. Thomsen, therefore, could not adequately argue to the court whether the treatment would have side effects that may undermine the fairness of the trial.[143]

The psychiatrist administered medication to Zhang, sometimes forcibly, and provided updates to the court every 30 days.[144] After 180 days, the psychiatrist found that Zhang was still not competent, and the court had no choice but to dismiss the case.[145]

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[133] Order Granting the Government's Motion to Involuntarily Medicate Defendant, *supra* note 126, at 2. Thus, the prosecution and, in part, the court wanted to hold Zhang accountable for the death of the victim. *See* Thomsen Testimony, *Transcript VIII*, p. 5-6.
[134] Thomsen Testimony, *Transcript VIII*, p. 5. Ms. Thomsen has concerns about the government attempting to hide the contents of a motion asking the court to involuntarily medicate a defendant. Ibid.
[135] *See* ibid. at 6.
[136] Order Granting the Government's Motion to Involuntarily Medicate Defendant, *supra* note 126; *see* Thomsen Testimony, *Transcript VIII*, p. 6.
[137] Order Granting the Government's Motion to Involuntarily Medicate Defendant, *supra* note 126; *see* Thomsen Testimony, *Transcript VIII*, p. 7.
[138] Thomsen Testimony, *Transcript VIII*, p. 7.
[139] *Sell v. U.S.*, 539 U.S. 166, 179 (2003).
[140] *Id*.
[141] *Id*.
[142] Order Granting the Government's Motion to Involuntarily Medicate Defendant, *supra* note 123; *see* Thomsen Testimony, *Transcript VIII*, p. 6.
[143] Thomsen Testimony, *Transcript VIII*, p. 6.
[144] Ibid. at 7-8. The medication was administered to Zhang that evening after the judge ordered the involuntary medication, and he physically resisted, leading to a violent altercation where he broke a window or door. Ibid.
[145] Ibid. at 8.

Sources of Legal Authority Related to Incarcerated Individuals' Rights to Access Health Care

This section discusses several key sources of legal authority that protects the right to adequate (medical and mental) health care for individuals confined in correctional and detention facilities, including U.S. Constitutional Amendments, federal laws and regulations, local laws and regulations, national prison standards and case law.

The Eighth Amendment to the U.S. Constitution is the fundamental benchmark or standard of correctional practice and prohibits any state from inflicting "cruel and unusual punishment" on convicted prisoners.[146] In *Estelle v. Gamble*—the seminal case on minimum levels of care for inmates—the U.S. Supreme Court asserted that the Court holds repugnant to the Eighth Amendment punishments that are incompatible with "the evolving standards of decency that mark the progress of a maturing society" or "involve the unnecessary and wanton infliction of pain."[147] The *Estelle* Court held that violations of a prisoner's Eighth Amendment right to adequate medical care[148] must include the "deliberate indifference to a prisoner's serious illness or injury" rather than "an inadvertent failure to provide adequate medical care."[149]

In *Farmer v. Brennan*, the U.S. Supreme Court further clarified that the Eighth Amendment imposes duties on prison officials to provide safe and humane conditions of confinement by ensuring "inmates receive adequate food, clothing, shelter, and medical care[.]"[150] The Ninth Circuit Court of Appeals extended the *Farmer* holding, a case regarding prisoners' safety, to also apply to serious health risks from constitutionally inadequate medical care in *Manila v. Guerrero*.[151] The *Manila* Court further elaborated on the *Estelle* rule and the two-part test[152] that the U.S. Supreme Court had adopted to determine whether prison officials were "deliberately indifferent" to a prisoner's serious medical needs.[153] Specifically, the *Manila* Court clarified that a prison official is deliberately indifferent only if he or she is "'(a) subjectively aware of the serious medical need and (b) failed to adequately respond.'"[154]

The Ninth Circuit Court of Appeals expanded its definition of "deliberate indifference" in *Camacho v. CNMI Department of Corrections*.[155] The *Camacho* Court declared that "deliberate indifference" is a high legal standard requiring "more than medical malpractice or gross negligence."[156] Instead, "deliberate indifference" requires the plaintiff inmate to show: (1) prison officials were "aware of his serious medical need," (2) "they disregarded an excessive risk to his

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[146] U.S. CONST. amend. VIII.

[147] *Estelle v. Gamble*, 429 U.S. 97, 104-06 (1976). This case involved a Texas inmate who sued prison officials, claiming they failed to provide adequate medical care after he was injured while performing prison labor. *Estelle*, *supra*, at 99-101.

[148] Incarcerated individuals have a right to receive healthcare, specifically the right to professional judgment and treatment that's prescribed by a professional. Herrington Testimony, *Transcript I*, p. 8.

[149] *Estelle*, 429 U.S. at 104-06. However, "an inadvertent failure to provide adequate medical care cannot be said to constitute 'an unnecessary and wanton infliction of pain' or to be 'repugnant to the conscience of mankind.'" *Estelle*, *supra*.

[150] *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).

[151] *Manila v. Guerrero*, No.: 18-cv-00003, 2019 WL 2064713, at *1, *6 (D. N. Mar. I. May 10, 2019).

[152] *See Jett v. Penner*, 439 F.3d 1091, 1096-98 (9th Cir. 2006).

[153] *Manila*, 2019 WL 2064713, at *4.

[154] *Id.* (emphasis added).

[155] *Camacho v. CNMI Department of Corrections*, No.: 18-cv-00008, 2019 WL 392376, at *1 (D. N. Mar. I. Jan. 31, 2019). The Court stated that prisoners suing under 42 U.S.C. § 1983 should not name the Department of Corrections, nor prison officials in their official capacity, as defendants; rather, they should name prison officials in their individual or personal capacity. *Camacho*, *supra.* at *4-5.

[156] *Id*. at *5.

health by denying, delaying or interfering with his medical care," and (3) the inmate "suffered substantial harm because of that denial, delay, or interference."[157]

While the Eighth Amendment protects the right to adequate health care for *convicted prisoners*, substantive due process under the Fourteenth Amendment to the U.S. Constitution protects the right to adequate health care for *pretrial detainees*.[158] The First Circuit Court of Appeals, in *Miranda-Rivera v. Toledo-Davila*, stated that the government's duty to provide adequate medical care to pretrial detainees extends "at least as far as the protection that the Eighth Amendment gives to a convicted prisoner."[159] In *Kingsley v. Hendrickson*—a case involving excessive force against a pretrial detainee, the U.S. Supreme Court applied a more protective standard under the substantive due process clause of the Fourteenth Amendment, only requiring pretrial detainee to show that defendant's actions were "objectively unreasonable" instead of "deliberately indifferent."[160] Courts have, however, refused to extend this lowered standard to pretrial detainees' claims related to the denial of adequate health care.[161] Thus, the legal standard applied to pretrial detainees' Fourteenth Amendment claims related to the denial of adequate health care is the same standard applied to convicted prisoners' Eighth Amendment claims related to the denial of adequate health care.[162]

In addition to the above constitutional protections, federal law provides incarcerated individuals with further protection and redress for alleged civil rights violations. The Civil Rights of Institutionalized Persons Act (CRIPA) of 1980 protects the rights of people in state or local correctional facilities, nursing homes, mental health facilities, group homes and institutions for people with intellectual and developmental disabilities.[163] CRIPA is legislation that authorizes actions for redress in cases involving deprivations of rights of institutionalized persons secured or protected by the Constitution or laws of the United States.[164] In addition to CRIPA, the Civil Action for Deprivation of Rights is another statute that authorizes actions for civil rights violations.[165] It provides individuals the right to sue state (or commonwealth/territory) government employees and others acting "under color of state law" for civil rights violations.[166]

The above constitutional and legislative protections provided incarcerated individuals opportunities for redress and, in response, the amount of prisoner litigation in federal courts increased.[167] To combat and decrease frivolous lawsuits, Congress enacted the Prison Litigation Reform Act (PLRA) of 1995.[168] The PLRA created systematic barriers for incarcerated individuals

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[157] *Id*. at *6.
[158] *See* U.S. CONST. amend. XIV; *Miranda-Rivera v. Toledo-Davila*, 813 F.3d 64, 74 (1st Cir. 2016).
[159] *Miranda-Rivera*, 813 F.3d at 74.
[160] The *Kingsley* Court only required the pretrial detainee to show that defendant's actions were "objectively unreasonable" rather than needing to prove "deliberate indifference." This protective standard was applied because plaintiff had not yet been convicted of a crime. *Kingsley v. Hendrickson*, 576 U.S. 389, 396-97, 399 (2015).
[161] *See Est. of Sacco v. Hillsborough Cnty. House of Corr.*, 561 F. Supp. 3d 71, 82 (D.N.H. 2021).
[162] In *Est. of Sacco*, the Court applied the traditional two-part test that the U.S. Supreme Court had established in *Estelle* to determine whether prison officials were "deliberately indifferent" to a prisoner's serious medical needs. *Id*.
[163] 42 U.S.C. §§ 1997-1997j (2025).
[164] *See id*.
[165] 42 U.S.C. § 1983 (2025).
[166] *Id*.
[167] National Council on Disability, "The Civil Rights of Institutionalized Persons Act: Has it Fulfilled its Promise?," at 14, (Aug. 8, 2005), https://www.ncd.gov/assets/uploads/reports/2005/ncd-civil-rights-institutionalied-persons-act-2005.pdf.
[168] National Council on Disability, "The Civil Rights of Institutionalized Persons Act: Has it Fulfilled its Promise?," at 14, (Aug. 8, 2005), https://www.ncd.gov/assets/uploads/reports/2005/ncd-civil-rights-institutionalied-persons-act-2005.pdf.; Prison

seeking to file lawsuits in federal court for alleged civil rights violations; in effect, decreasing the amount of prisoner litigation in federal courts.[169] Specifically, under the PLRA and 28 U.S.C. § 1915, prisoners are required to exhaust administrative remedies through the prison's grievance procedure prior to filing a lawsuit in federal court, pay court filing fees (either up-front or overtime by monthly installments from their prison commissary accounts), are only allowed three opportunities to file a lawsuit or appeal (three strike rule), and bars lawsuits for monetary damages for mental injury unless physical harm is present.[170]

There are two leading organizations that publish national prison standards: American Correctional Association (ACA)[171] and the National Commission on Correctional Healthcare (NCCHC).[172] These operational standards provide guidance on how prisons should administer their correctional practice, including security, custody, safety, administration, as well as the delivery of medical and mental health care.[173]

Methodology

As a matter of historical precedent, and in order to achieve transparency, Committee studies involve a collection of public, testimonial evidence and written comments from individuals directly impacted by the civil rights topic at hand; researchers and experts who have rigorously studied and reported on the topic; community organizations and advocates representing a broad range of backgrounds and perspectives related to the topic; and government officials tasked with related policy decisions and the administration of those policies.

Committee studies require Committee members to use their expertise in selecting a sample of panelists that is the most useful to the purposes of the study and will result in a broad and diverse understanding of the issue. This method of (non-probability) judgment sampling requires Committee members to draw from their own experiences, knowledge, opinions, and views to gain an understanding of the issue and possible policy solutions. Committees are composed of volunteer professionals who are familiar with civil rights issues in their state or territory. Members represent a variety of political viewpoints, occupations, racial and ethnic backgrounds, ages, and gender/gender identities, as well as a variety of background, skills, and experiences. The intentional diversity of each Committee promotes vigorous debate and full exploration of the

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Litigation Reform Act of 1995, Pub. L. No. 104-134, §§ 801-810, 110 Stat. 1321-66, 1321-66 to -72 (1996) (codified as amended at 42 U.S.C. § 1997e).

[169] National Council on Disability, "The Civil Rights of Institutionalized Persons Act: Has it Fulfilled its Promise?," at 14, (Aug. 8, 2005), https://www.ncd.gov/assets/uploads/reports/2005/ncd-civil-rights-institutionalied-persons-act-2005.pdf.

[170] 28 U.S.C. §§ 1915(b), (g) (2025); 42 U.S.C. §§ 1997e(a), (e).

[171] *See generally Standards*, American Correctional Association, https://www.aca.org/ACA_Member/ACA/ACA_Member/Standards_and_Accreditation/StandardsInfo_Home.aspx (last visited May 29, 2025).

[172] *See generally Standards*, National Commission on Correctional Health Care, https://www.ncchc.org/standards/ (last visited on May 29, 2025).

[173] *See generally Standards*, American Correctional Association, https://www.aca.org/ACA_Member/ACA/ACA_Member/Standards_and_Accreditation/StandardsInfo_Home.aspx (last visited May 29, 2025); *Standards*, National Commission on Correctional Health Care, https://www.ncchc.org/standards/ (last visited on May 29, 2025).

issues. It also serves to assist in offsetting biases that can result in oversight of nuances in the testimony.

In fulfillment of the Committees' responsibility to advise the Commission of civil rights matters in their locales, Committees conduct an in-depth review and thematic analysis of the testimony received and other data gathered throughout the course of their inquiry. Committee members use this publicly collected information, often from those directly impacted by the civil rights topic of study, or others with direct expert knowledge of such matters, to identify findings and recommendations to report to the Commission. Drafts of the Committee's report are publicly available and shared with panelists and other contributors to ensure that their testimony was accurately captured. Reports are also shared with affected agencies to request clarification regarding allegations noted in testimony.

For the purposes of this study, **Findings** are defined as what the testimony and other data *suggested, revealed, or indicated* based upon the data collected by the Committee. Findings refer to a synthesis of observations confirmed by majority vote of members, rather than conclusions drawn by any one member. **Recommendations** are specific actions or proposed policy interventions intended to address or alleviate the civil rights concerns raised in the related findings. Where findings indicate a lack of sufficient knowledge or available data to fully understand the civil rights issues at hand, recommendations may also target specific directed areas in need of further, more rigorous study. Recommendations are directed to the Commission; they request that the Commission itself take specific action, or that the Commission forward recommendations to other federal or state agencies, policy makers, or stakeholders.

Findings

In keeping with their duty to inform the Commission of (1) matters related to discrimination or a denial of equal protection of the laws; and (2) matters of mutual concern in the preparation of reports of the Commission to the President and the Congress,[174] the Northern Mariana Islands Advisory Committee submits the following findings to the Commission regarding incarcerated individuals' access to adequate healthcare within the Northern Mariana Islands' justice system. This report seeks to highlight the most salient civil-rights themes as they emerged from the Committee's inquiry. The complete meeting transcripts and written testimony received are accessible by a weblink in citation and at the end of the report for further reference.[175]

Finding #1: Despite the termination of the 1999 Consent Decree between the United States and the Commonwealth of the Northern Mariana Islands in 2014, CNMI currently falls short of the assurances made under said Consent Decree.[176]

A. The sanitation section of the Consent Decree required the CNMI to provide sanitary conditions of confinement, hot water in all bathrooms for personal hygiene and cleaning of

[174] 45 C.F.R. § 703.2 (2018).
[175] Link to relevant report materials: https://usccr.box.com/s/vij43nlwtwnn7dznofebgp4apu70drks.
[176] *See infra* footnotes 177-98 and corresponding text for supporting information.

the facility, and adequate toilet and shower facilities.[177] According to prior inmates, unsanitary prison conditions still exist.[178]

i. Prior inmates reported that some of the cells lack running water or a working toilet because there's no preventative maintenance for the prison's plumbing system.[179]

ii. Prior inmates also reported that the prison lacks adequate cleaning supplies and does not task enough inmate workers with cleaning.[180]

B. The security and protection from harm section of the Consent Decree required the CNMI to provide adequate staffing for the DOC facilities, provide regular, direct sight and sound supervision over confined persons, and provide officers with ability to communicate to central command at all times.[181] According to prior inmates and recent news, unsafe prison conditions still exist.[182]

i. Areas of the prison are insufficiently monitored due to lack of security cameras.[183]

a. During the prison tour, advisory committee members observed that some areas of the prison lacked security cameras.[184]

ii. Officers are unable to verbally communicate with the DOC's central command or "mini-control" at all times.[185]

a. During the tour of the prison, advisory committee members observed that there was some delay in moving from one area to another because they had to wait until the DOC guard stationed in "mini-control" saw on the security cameras that the group waving or waiting for the doors to be unlocked.[186]

iii. A prior inmate stated that inmates are not properly separated; similarly, there is no classification or separation for detainees and inmates that are high level security risks.[187]

a. For example, despite DOC separating male and female inmates in different sections within a pod, a female inmate was allegedly pulled into a neighboring section and sexually assaulted by a male inmate.[188]

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[177] Final Consent Decree Report in Support of Termination at 10-11, *United States v. Commonwealth of the Northern Mariana Islands*, No. 1:99-cv-00017 (D. N. Mar. I. April 30, 2014).
[178] Mendiola Testimony, *Transcript I*, p.11.
[179] Aldon Testimony, *Transcript I*, p.18; Mendiola Testimony, *Transcript I*, p.11-12.
[180] Aldon Testimony, *Transcript I*, p.18.
[181] Final Consent Decree Report in Support of Termination, *supra* note 177, at 12-14.
[182] Mendiola Testimony, *Transcript I*, p.15-16; Verified Complaint, *Shaina Castro v. Torres*, No. 25-0038-CV (N. Mar. I. Commw. Super. Ct. Feb. 21, 2025) https://usccr.box.com/s/qo6ojrdy9jp5n16dur9adk2h4atk9lo1; *see* Bryan Manabat, "Former Inmate Sues Corrections Officials," *Marianas Variety* (Feb. 27, 2025) https://www.mvariety.com/news/local/former-inmate-sues-corrections-officials/article_7b358284-f449-11ef-8dd4-d7acd0a67d90.html.
[183] Cachero Testimony, *Transcript VII*, p. 8; Dotts Testimony, *Transcript VII*, p. 10.
[184] Ibid.
[185] According to a prior inmate, many of the doors separating sections of the pods in DOC were controlled remotely from a control area commonly known as the "mini-control." *See* Verified Complaint, *supra* note 182.
[186] Cachero Testimony, *Transcript VII*, p. 8
[187] The DOC administrative code states that "[n]o specific security level classification system will be maintained at the facility." N. MAR. I. ADMIN CODE § 57-20.1-501 (2021); Mendiola Testimony, *Transcript I*, p.15-16.
[188] Verified Complaint, *supra* note 182; Bryan Manabat, "Former Inmate Sues Corrections Officials," *Marianas Variety* (Feb. 27, 2025) https://www.mvariety.com/news/local/former-inmate-sues-corrections-officials/article_7b358284-f449-11ef-8dd4-d7acd0a67d90.html. According to the female inmate's Complaint, the section doors separating the male and female inmates are remotely controlled by DOC guards in "mini-control" that watch the security cameras. Verified Complaint, *supra* note 182.

C. The sanitation section of the Consent Decree required the CNMI to provide special diets that are approved by a qualified dietician where medical indicated.[189] A prior inmate has reported that the quality of food provided in DOC is inadequate, especially for those that may have dietary restrictions.[190]

D. The medical care section of the Consent Decree required that medication only be administered by an appropriately trained nurse or other individual.[191] DOC, however, does not currently comply with this requirement.[192]

   i. Three DOC guards are assigned to the DOC medical unit and are tasked with administering medication to inmates.[193] Neither of these guards are nurses, nor are they certified to administer medication.[194]

   ii. According to prior inmates, DOC guards have even asked inmates to dispense medication to their fellow inmates.[195]

   iii. Members observed a box in front of the drop box for "sick calls" that contained over-the-counter medication like Tylenol, but it was unclear how the medications were dispersed or for whom they were for.[196] Members believed that the guards could dispense these to inmates at any time.[197]

E. The medical care section of the Consent Decree required the CNMI to provide inmates with basic access to medical care.[198] As described more thoroughly below, the CNMI falls short of this requirement as well.

Finding #2: The overall shortage of healthcare providers, and extreme shortage of mental health care providers, within the CNMI contributes to the CNMI's inability to provide access to adequate healthcare for individuals within the criminal justice system.[199]

A. There is an overall shortage of healthcare providers in the CNMI.[200] CHCC states that it faces challenges in recruiting and retaining health care professionals because few healthcare providers want to or can come to the CNMI for work.[201]

Commissioner Torres, however, stated DOC was not able to determine how this incident occurred due to the lack of security camera footage and highlighted his intention to obtain additional security cameras to address these concerns. Cachero Testimony, *Transcript VII*, p. 8.

[189] Final Consent Decree Report in Support of Termination, *supra* note 177, at 8-10.

[190] Mendiola Testimony, *Transcript VII*, p. 8.

[191] Final Consent Decree Report in Support of Termination, *supra* note 177, at 11-12.

[192] Ibid.

[193] Reyes Testimony, *Transcript I*, p.17; Aldon Testimony, *Transcript I*, p.18.

[194] Reyes Testimony, *Transcript I*, p.17, 23. The only training the two guards have received is the training which Dr. Kothheimer has informally provided. Cachero Testimony, *Transcript VII*, p. 9.

[195] Aldon Testimony, *Transcript I*, p. 18.

[196] Cachero Testimony, *Transcript VII*, p. 14

[197] Ibid.

[198] Final Consent Decree Report in Support of Termination, *supra* note 177, at 11-12.

[199] *See infra* footnotes 200-08 and corresponding text for supporting information.

[200] Muna Testimony, *Transcript III*, p. 4, 15. CNMI has a High Health Professional Shortage Area (HSPA) score of "18 and above." Ibid. at 4.

[201] Ibid. at 5. CHCC is continually working on recruiting and retaining medical staff to relieve the shortage of healthcare professionals. Ibid. CHCC notes that there is constant turnover with healthcare contractors who try to take advantage of the CNMI's high demand for healthcare workers. Ibid. Many contractors want to live in the CNMI short-term (sometimes as short as 3 months) and try to get as many benefits as possible. Ibid.

B. CNMI has an extreme shortage of mental health care providers, particularly psychiatrists and other mental healthcare professionals who provide higher levels of care.[202] The few psychiatrists and mental healthcare professionals in the CNMI struggle to meet the mental health needs of the entire CNMI population.[203] Individuals within the criminal justice system (i.e., pre-trial detainees, adult and juvenile inmates, and participants in the mental health court and drug court programs) are often not prioritized and have longer wait times.[204]

i. There are only about five licensed professional counselors and two to three CHCC psychiatrists.[205] While willing and wanting to assist those within the criminal justice system, they simply do not have the capacity to adequately service the entire CNMI population.[206]

ii. In 2021, Kagman Community Health Center only had 1 mental health professional servicing all of CNMI, including inmates in the Mental Health Court and Drug Court.[207]

iii. CHCC's Community Guidance Center (CGC) reported that there's been some increase in staffing for mental health providers, but that growth has primarily been for those who work on the front lines; there is still a severe shortage of specialized mental healthcare providers with licenses.[208]

Finding #3: Despite having an on-site medical and psychological unit, DOC inmates continue to face several barriers in accessing adequate healthcare within DOC.[209]

A. Multiple speakers reported DOC does not adequately respond to inmates' sick calls and grievances.[210]

i. "Sick Calls" are triage forms or paper slips that all inmates at DOC can use to request for medical care, which are given from inmate to the guards and the guards are responsible for taking the requests to the medical unit.[211]

a. Prior inmates reported that DOC failed to respond to their sick calls or were required to submit multiple before getting a response.[212]

b. According to Commissioner Torres, the DOC medical unit uses a medical referral process to review and respond to sick calls.[213] Despite the existence of a medical

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[202] Su Testimony, *Transcript II*, p. 7; Arriola Testimony, *Transcript II*, 9; Thomsen Testimony, *Transcript VIII*, p. 14.
[203] Arriola Testimony, *Transcript II*, p. 10-11, Yolles Testimony, *Transcript III*, p. 7.
[204] Su Testimony, *Transcript II*, p. 7; Diaz Testimony, *Transcript V*, p. 13, 15.
[205] Arriola Testimony, *Transcript II*, p. 9-11; Yolles Testimony, *Transcript III*, p.7.
[206] Yolles Testimony, *Transcript III*, p. 7.
[207] Arriola Testimony, *Transcript II*, p. 9.
[208] George Testimony, *Transcript III*, p. 13.
[209] *See infra* footnotes 210-62 and corresponding text for supporting information.
[210] *See infra* footnotes 211-21 and corresponding text for supporting information.
[211] Dotts Testimony, *Transcript VII*, p. 14. Torres Testimony, *Transcript IV*, p. 4.
[212] Mendiola Testimony, *Transcript I*, p. 13; Aldon Testimony, *Transcript I*, p. 18; Tilipao-Rebuenog Testimony, *Transcript VII*, p. 12.
[213] *See supra* footnotes 61-66 for further details related to DOC's medical referral process. Torres Testimony, *Transcript IV*, p. 4

referral process, it remains unclear whether sick calls are responded to according to this medical referral process.[214]

1) Specifically, there is some concern around the subjectivity/arbitrariness of who gets seen by the doctor; for example, a prior inmate alleged discrimination based on his background (i.e., being from Tinian).[215]
2) Some speakers reported seeing sick calls thrown in the trash because of who submitted the sick call.[216]

ii. Grievances are complaints that inmates can leave anonymously in a drop box, which are then reviewed by DOC's Internal Affairs Unit.[217]

a. According to the DOC Commissioner, DOC regulations related to grievance procedures were revamped as recently as 2020.[218] Despite DOC having a grievance procedure, there are still concerns about the implementation of the grievance procedures.[219]
b. Detainees and inmates do not have an avenue for seeking redress if their grievance was not responded to; there is no administrative appeal process, just filing a 1983 action in federal court.[220]
c. Speakers stated there are concerns around the lack of anonymity of grievances and possible retaliation by guards; for example, while grievances are supposed to be anonymous, many inmates must rely on guards putting the inmates' grievance in the actual drop box.[221]

B. DOC lacks trained medical staff to appropriately address the medical needs of DOC inmates.[222]

i. Despite the United States terminating the Consent Decree based on CHCC's assurance to provide full-time nurse availability during regular working hours and a nurse always on-call,[223] and DOC now taking on the responsibility of providing healthcare to its own inmates, DOC does not have sufficient levels of medical staff for the medical needs of the prison.[224]

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[214] Cachero Testimony, *Transcript VII*, p.13; Dotts Testimony, *Transcript VII*, p.14; Tilipao-Rebuenog Testimony, *Transcript VII*, p. 12.
[215] Cachero Testimony, *Transcript VII*, p.13. One speaker had a back problem and was taken to CHCC, where they recommended he go to Guam for a spinal shot. The speaker, however, was denied getting the shot in Guam but claimed there were other prisoners who were flown to Guam for less serious procedures. The speaker alleges that there may have been some discrimination against him based on where he was from (an outer-island, Tinian). Mendiola Testimony, *Transcript I*, p. 14.
[216] Reyes Testimony, *Transcript I*, p. 17; Mendiola Testimony, *Transcript I*, p. 13; Aldon Testimony, *Transcript I*, p. 18. An Internal Affairs DOC Guard stated that they believe inmates often submit sick calls just to attempt to leave their pod. Solomon Testimony, *Transcript VII*, p. 14.
[217] Dotts Testimony, *Transcript VII*, p. 14.
[218] Torres Written Testimony, Nov. 6, 2023, Email; Torres Testimony, *Transcript IV*, p. 5.
[219] Mendiola Testimony, *Transcript I*, p. 14, 15; Cachero Testimony, *Transcript I*, p. 22.
[220] Dotts Testimony, *Transcript I*, p. 22.
[221] Cachero Testimony, *Transcript VII*, p. 13; Dotts Testimony, *Transcript VII*, p. 12.
[222] *See infra* footnotes 223-38 and corresponding text for supporting information.
[223] *See supra* footnote 58 and corresponding text.
[224] *See infra* footnotes 225-28 and corresponding text.

a. DOC's medical unit includes one full-time doctor and three DOC correctional officers assigned to assist the doctor.[225]
    1) The only training that the three correctional officers assigned to the medical unit received is informal training by Dr. Kothheimer.[226]
b. DOC currently does not employ a full-time nurse.[227]
    1) DOC recently received funding from the CNMI legislature to hire 2-3 nurses, but there are still concerns around recruiting and retaining nurses for the prison.[228]

iii. The level of care provided by the DOC doctor, Dr. Kothheimer, is inadequate for DOC inmates and costly for DOC.[229]
a. Specifically, Dr. Kothheimer refuses to perform simple procedures that he believes nurses should do despite knowing that DOC does not have a nurse to complete these tasks.[230] These procedures include making incisions, stitches, putting in an IV, drawing blood or throat swabs for lab testing.[231]
b. Because Dr. Kothheimer refuses to draw blood or throat swabs, the inmates must be transported to CHCC for lab testing, which results in delayed care to the inmates, more costs for DOC, and less guards at the DOC facility.[232] Dr. Kothheimer reports that the lab testing results take about two to four days.[233]
c. Dr. Kothheimer is responsible for completing a monthly report that is sent to the DOC Commissioner informing him/her of the status of the inmates receiving and/or requiring care.[234] Speakers have stated, however, that this report is simply copied and pasted each month, and there is no other communication between Dr. Kothheimer and the DOC Commissioner.[235]
d. Dr. Kothheimer reports only seeing 3-4 patients a day but, according to the monthly report, over 50 inmates require special medical care.[236]
    1) Dr. Kothheimer is only available from 7:30 pm-4:30 pm, and there are no other medically trained staff at the prison during afterhours.[237] Dr. Kothheimer also

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[225] Torres Testimony, *Transcript IV*, p. 4.
[226] Cachero Testimony, *Transcript VII*, p. 9; Dotts Testimony, *Transcript VII*, p. 10.
[227] Mendiola Testimony, *Transcript I*, p. 12; Aldon Testimony, *Transcript I*, p. 18. Mr. Aldon stated that, in the past, DOC had hired some nurses to assist the DOC doctor, but that the nurses would leave after a few months and DOC staff stated that DOC could no longer afford the nurses. Aldon Testimony, *Transcript I*, p. 18.
[228] Flores Testimony, *Transcript IV*, p. 19; Torres Testimony, *Transcript IV*, p. 19; *see* Cachero Testimony, *Transcript VII*, p. 8, 9, 16.
[229] Cachero Testimony, *Transcript VII*, p. 9,14; Dotts Testimony, *Transcript VII*, p. 5, 15-17; Solomon Testimony, *Transcript VII*, p. 6-7.
[230] Cachero Testimony, *Transcript VII*, p. 9; Dotts Testimony, *Transcript VII*, p. 5; Solomon Testimony, *Transcript VII*, p. 6-7.
[231] Cachero Testimony, *Transcript VII*, p. 9; Dotts Testimony, *Transcript VII*, p. 5.
[232] Cachero Testimony, *Transcript VII*, p. 9; Dotts Testimony, *Transcript VII*, p. 16-17.
[233] Cachero Testimony, *Transcript VII*, p. 9.
[234] Cachero Testimony, *Transcript VII*, p. 14; Dotts Testimony, *Transcript VII*, p. 15.
[235] Berline Testimony, *Transcript VI*, p. 11-12.
[236] Dotts Testimony, *Transcript VII*, p. 11. Also, doctors in private practice are able to see up to 15-20 patients a day. Dotts Testimony, *Transcript VII*, p. 11.
[237] Hunter Testimony, *Transcript VII*, p. 6.

stated that it would be helpful to have a trained guard to dispense medication when he is not present.[238]

C. DOC lacks trained mental health professionals to appropriately address the mental health needs of DOC inmates.[239]

i. DOC's "psychological unit" consists of two mental health counselors; there are no psychiatrists.[240] According to DOC, these two counselors are available to provide services to detainees and inmates.[241] However, several speakers reported there is no access to mental health services or counseling for inmates and, instead, the DOC counselors are there to provide services to DOC guards and staff.[242]

ii. DOC reports that inmates can also schedule mental health appointments with CHCC psychiatrists via telepsychiatry.[243] A CHC psychiatrist, however, stated that CHC psychiatrists typically only see inmates when they are consulted at the emergency room or at the inpatient unit at CHC.[244]

iii. According to Commissioner Torres, if an inmate requires emergency mental health attention, the inmate is taken to the CHCC emergency department.[245]

D. DOC fails to address the dental health needs of DOC inmates.[246]

i. According to prior inmates, DOC does not refer inmates to dentists for reported dental issues.[247] Instead of receiving the proper dental care they require, they state that it is DOC policy to extract inmates' teeth.[248]

E. Budgetary constraints contribute towards DOC's inadequate healthcare services for inmates.[249]

i. Several speakers noted that DOC has been unable to retain medical staff/nurses because of the lack of DOC's funding/budget.[250]

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[238] Hunter Testimony, *Transcript VII*, p. 6.
[239] *See infra* footnotes 240-45 and corresponding text for supporting information.
[240] Torres Testimony, *Transcript IV*, p. 18-19.
[241] Ibid. at 18.
[242] Aldon Testimony, *Transcript I*, p. 24; Reyes Testimony, *Transcript I*, p. 25. Mr. Mendiola reports that, despite his numerous requests for mental health treatment during his incarceration, he was only allowed to speak to a psychiatrist once via teleconference. Mendiola Testimony, *Transcript I*, p. 16-17. Mr. Aldon reports that he saw a psychiatrist once via teleconference during the 17 years that he was incarcerated. Aldon Testimony, *Transcript I*, p. 24.
[243] Torres Testimony, *Transcript IV*, p. 4-5. According to Commissioner Torres, DOC utilizes telehealth to facilitate psychiatric evaluations, individualized therapy, patient education and medication arrangement. DOC states that using telepsychiatry offers more privacy for inmates vs. in-person appts where guards are present. Torres Written Testimony, Nov. 6, 2023, Email
[244] Yolles Testimony, *Transcript III*, p. 7.
[245] Torres Written Testimony, Nov. 6, 2023, Email.
[246] *See infra* footnotes 247-48 and corresponding text for supporting information.
[247] Mendiola Testimony, *Transcript I*, p. 16; Aldon Testimony, *Transcript I*, p. 18.
[248] Mendiola Testimony, *Transcript I*, p. 16; Aldon Testimony, *Transcript I*, p. 18; *see* Complaint at 4, *Aguon v. Attao*, No. 1:18-cv-00018 (D. N. Mar. I. June 1, 2018), https://usccr.box.com/s/femxovzqoaxyb0qucc7sogha7ej69v8d. Mr. Mendiola lost 6 teeth because he did not receive dental care while in DOC. Mendiola Testimony, *Transcript I*, p. 16. The policy at DOC is that when a detainee/inmate complains of pain in their teeth, the teeth are extracted instead of receiving proper dental care. Ibid. The reasoning that DOC staff would cite is that "there's no money." Aldon Testimony, *Transcript I*, p. 18.
[249] *See infra* footnotes 250-57 and corresponding text for supporting information.
[250] Reyes Testimony, *Transcript I*, p. 24; Aldon Testimony, *Transcript I*, p. 19-20; Torres Testimony, *Transcript IV*, p. 6; Flores Testimony, *Transcript IV*, p. 9; Seman Public Comment, *Transcript IV*, p. 22; Ada Testimony, *Transcript V*, p. 15.

ii. A speaker highlighted that CNMI's DOC is spending much less on inmates' healthcare compared to other similar jurisdictions.[251] For example, the CNMI is spending approximately[252] $103 per incarcerated individual per month for healthcare, while other similarly sized jurisdictions like Vermont are spending about $700 per incarcerated individual per month for healthcare.[253]

iii. Several speakers provided examples of DOC's attempts to avoid paying for the medical care of inmates, which points to a lack of funding.[254] In one instance, DOC asked the parole board to deport an inmate because DOC reasoned that it did not want to pay for that inmate's medical expenses.[255] In another case, DOC unsuccessfully attempted to commute a prisoner's sentence in an attempt to rid itself of the duty to provide that inmate with the medical care he needed.[256]

iv. On the other hand, even if DOC's budget increased, there is a concern that access to adequate healthcare won't necessarily improve because there is a general shortage of health care and mental health care providers in the CNMI.[257]

F. Historically, there have been several CNMI politically appointed government officials, such as the Commissioner of DOC, who lacked experience and training which may have led to DOC's failure in providing inmates with adequate healthcare.[258]

i. Some CNMI politically appointed government officials, such as the Commissioner of the Department of Corrections, were appointed by the CNMI governor in exchange for political influence and/or political votes.[259] This, however, resulted in political appointees not having the experience or training they should have.[260]

ii. For example, prior DOC Commissioners that were sued by prior inmates for the failure to provide adequate medical care had very little experience in running a correctional institution but were appointed DOC Commissioner.[261] When questioned about their

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[251] Herrington Testimony, *Transcript I*, p. 6.
[252] The speaker was unsure of the exact amount but was confident that DOC's actual healthcare expenses per inmate per month is no more than $103 and that this is likely an overestimation. Ibid. at 20.
[253] Ibid.
[254] Reyes Testimony, *Transcript I*, p. 19; Berline Testimony, *Transcript VI*, p. 8, 13.
[255] Reyes Testimony, *Transcript I*, p. 19.
[256] Berline Testimony, *Transcript V*, p. 8, 13. In this case, the plaintiff inmate sued DOC officials for the failure to provide him with adequate medical care and asked the court for injunctive relief for DOC to provide the necessary care he required. Ibid. Inmates are entitled to request injunctive relief; this right no longer exists once an inmate is released from DOC custody. Ibid. Thus, DOC attempted to release the plaintiff inmate from its custody in order to avoid being compelled by the courts, through an order for injunctive relief, to provide the medical care the plaintiff inmate required. Ibid.
[257] Su Testimony, *Transcript II*, p. 7; Torres Testimony, *Transcript IV*, p. 19-20.
[258] *See infra* footnotes 259-62 and corresponding text for supporting information.
[259] According to the speaker, the sheer number of family members of a particular person can assist with putting a candidate in office. Berline Testimony, *Transcript VI*, p. 6. Thus, the proposition is that, by promising an individual a political appointment, a candidate will receive votes from family members of a potential political appointee. Ibid.
[260] Ibid.
[261] Ibid.

duties under the Eighth Amendment to the Constitution as it relates to the provision of medical care to incarcerated individuals, they were unable to provide an answer.[262]

Finding #4: Because of the challenges that DOC faces in providing inmates with adequate on-site health care, DOC must often send inmates off-site to CHCC—even for routine healthcare services.[263] Despite this makeshift solution, inmates still face barriers in accessing adequate healthcare through CHCC and other external providers.[264]

A. The delivery of adequate healthcare to inmates is impeded by the lack of communication and coordination between DOC and CHCC.[265] This lack of communication and coordination results in delayed delivery of healthcare to inmates and higher costs for DOC.[266]

i. CHCC healthcare providers are not provided with adequate background of the inmate patients that are sent to CHCC.[267] CHCC healthcare providers report having little contact with the DOC doctor or medical unit, not having access to inmate patients' health screenings, and seeing inmate patients without information about their referral to CHCC.[268]

ii. Because the DOC doctor is not privileged at CHCC, he is unable to quickly access CHCC electronic health records of the inmates.[269] Instead, one of the correctional officers from the medical unit must obtain physical copies from CHCC hospital records, which results in unnecessary transportation, absence of personnel from DOC and delayed delivery of care.[270]

i. After inmates are seen at CHCC, it is unclear whether or how the consultation reports and medical notes from the examination are communicated or delivered to the DOC doctor and DOC leaders who oversee the decisions about the inmate's subsequent delivery of healthcare.[271]

ii. There has been a major disconnect between DOC leadership and the healthcare providers, including the DOC doctor, which contributes to the delay in delivery of health care or the failure to provide adequate healthcare.[272] For example, the previous DOC Commissioners did not have weekly or reoccurring meetings with the DOC

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[262] Ibid.
[263] *See supra* footnotes 230-33 and corresponding text for an in-depth discussion related to DOC's need to send inmates to CHCC for simple medical procedures and testing.
[264] *See infra* footnotes 265-88 and corresponding text for supporting information.
[265] Ms. Muna and Dr. Yolles stated that improved communication and coordination with DOC would improve the access and delivery of healthcare for incarcerated individuals. Muna Testimony, *Transcript III*, p.10; Yolles Testimony, *Transcript III*, p. 9-10, 11-12.
[266] Torres Testimony, *Transcript IV*, p. 5; Berline Testimony, *Transcript VI*, p. 11.
[267] Yolles Testimony, *Transcript III*, p. 9-12.
[268] Ibid. CHCC providers aren't privy to the health screening of inmates nor the referral process at DOC. Ibid. CHCC psychiatrists report not having any other information that what is in their own CHCC records. Ibid. Furthermore, CHCC psychiatrists also report seeing patients from DOC who are referred but the only information provided by DOC is the patient's name; there is no diagnosis, complaint or reason for the visit, clarification on the urgency for the patient, etc. Ibid.
[269] Muna Testimony, *Transcript III*, p. 10; Torres Testimony, *Transcript IV*, p. 5.
[270] Torres Testimony, *Transcript IV*, p. 5.
[271] Berline Testimony, *Transcript VI*, p. 11.
[272] Ibid.

medical unit team to monitor the medical cases of the inmates requiring ongoing healthcare care services.[273]

B. The lack of oversight or management of the delivery of healthcare to inmates may contribute to the inmates' lack of access to adequate healthcare.[274]

i. Currently, there is no individual who is responsible for overseeing and/or following up on whether inmates' sick calls are being responded to or whether inmates are actually taken to their appointments or received the care they need.[275] This has resulted in inmates not receiving the care they need, as well as a lack in accountability for DOC officials.[276]

ii. DOC's medical records may not be properly filed and/or organized, which may make retrieving inmates medical records difficult and time-consuming, possibly leading to delayed delivery of healthcare.[277]

C. Inmates that require off-island healthcare services must be referred through the Health Network Program (formerly known as the Off-Island Medical Referral Office) and, thus, may face additional barriers in accessing the healthcare they require.[278]

i. HNP's coverage for off-island healthcare services is limited, which may result in inmates' healthcare services not being covered and may result in inmates potentially not being able to receive the healthcare services they need.[279]

ii. Obtaining approval and funding for off-island health care through HNP is a slow process, which may result in an inmate missing out on care if it's too late.[280]

a. In one instance, an inmate was sent to Guam to receive healthcare services imminently required, but was turned away because they could not perform the services in time.[281] The only alternative was for the inmate to travel to Hawaii to receive the healthcare services he needed, but HNP could not process an inmate's request for off-island services quick enough due to the bureaucracy and required form filings.[282] Thus, Commissioner Torres, understanding CNMI's duty to provide

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[273] Ibid. at 11-12.
[274] *See infra* footnotes 275-77 and corresponding text for supporting information.
[275] Berline Testimony, *Transcript VI*, p. 7, 11. There's no mechanism or standard operating procedure in place that ensures that the prisoners are being taken to their medical appointments at CHC or dental appointments or eye doctor appointments, nor is there a mechanism in place that ensures the consultation reports and results of the examinations are being adequately communicated to the people that matter at DOC who make decisions about the delivery of medical care. Ibid.
[276] For example, in the *Manila* case, DOC administrative staff and leadership denied knowledge of the doctor's orders in a letter that stated Manila needed a retinal specialist as soon as possible or Manila's condition would lead to vision loss. Declaration of Bruce Berline at 4-27, *Manila*, 2019 WL 2064713 (Dec. 1, 2023), https://usccr.box.com/s/f74ek8ygh5m7s0mw77qv4fixraw4obna. Further, they claimed they passed on the letter to someone else but there was no follow-up and assumed someone else was handling the problem. Berline Testimony, *Transcript V*, p. 7.
[277] Tilipao-Rebuenog Testimony, *Transcript VII*, p. 17. NMPASI staff report that they are tasked with obtaining the medical records themselves but found that the medical records were not properly filed (medical records were stacked in boxes and not properly filed in filing cabinets) and were unorganized. Ibid.
[278] *See infra* footnotes 279-83 and corresponding text for supporting information.
[279] Muna Testimony, *Transcript III*, p. 4.
[280] Cachero Testimony, *Transcript VII*, p. 14; Dotts Testimony, *Transcript VII*, p. 15.
[281] Ibid.
[282] Ibid.

adequate medical care under the Eighth Amendment, took it upon himself to arrange for medical services for the inmate in Hawaii.[283]

D. Incarcerated individuals in the CNMI are no longer covered under Medicaid. Thus, DOC is solely responsible for covering most of the health care costs for inmates, including services that are provided internally in DOC's medical unit and outpatient services at a medical institution like CHCC.[284]

i. While incarcerated, prisons are generally responsible for providing health care services to their inmates and inmate health care can be costly for state and local governments.[285] The Medicaid statute, generally, prohibits reimbursement for services delivered in a public institution like a prison.[286]

ii. Medicaid coverage was available to CNMI inmates during the COVID-19 public health emergency, but that coverage ended on May 11, 2023.[287] Thus, CNMI inmates are no longer eligible for healthcare coverage under Medicaid.[288]

Finding #5: The Department of Youth Services, responsible for the probation and detention of CNMI juvenile offenders, faces several barriers in providing juvenile offenders with medical and mental healthcare services.[289]

A. Obtaining initial psychiatric evaluations and scheduling counseling and behavioral health services for juvenile offenders at CHCC can take up to one to three months.[290] DYS Juvenile Detention Unit has, therefore, opted to contract out counseling and behavioral health services for the juvenile population, which the contractors are able to conduct the initial intake within two days of booking and meet an additional two to three more times over the next week to complete the preliminary evaluation and assessment.[291]

B. DYS contracts mental health and behavioral health services from psychiatrists in Guam and this can be costly for DYS.[292]

C. DYS receives federal fundings, but there are several branches within DYS that the funding is directed.[293] DYS reports that an insufficient amount of the funds is allocated to the

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[283] Ibid.
[284] *See infra* footnotes 285-88 and corresponding text for supporting information.
[285] *See Estelle v. Gamble*, 429 U.S. 97, 103 (1976); Congressional Research Service, Medicaid and Incarcerated Individuals, prepared by Evelyne Baumrucker, 2024, p. 1, https://www.congress.gov/crs_external_products/IF/PDF/IF11830/IF11830.5.pdf.
[286] 42 U.S.C. § 1396d(a) (2025); *see* Congressional Research Service, Medicaid and Incarcerated Individuals, prepared by Evelyne Baumrucker, 2024, p. 1, https://www.congress.gov/crs_external_products/IF/PDF/IF11830/IF11830.5.pdf. State and local governments may be reimbursed for portion of expenses for coverable services when eligible inmates are inpatient for 24 hours or longer in a medical institution. 42 U.S.C. § 1396d(a) (2025); *see* Congressional Research Service, Medicaid and Incarcerated Individuals, prepared by Evelyne Baumrucker, 2024, p. 1, https://www.congress.gov/crs_external_products/IF/PDF/IF11830/IF11830.5.pdf.
[287] Muna Testimony, *Transcript III*, p. 4.
[288] Ibid. Note that Medicaid coverage is available to incarcerated US citizens residing in the states under certain conditions. Ibid.
[289] *See infra* footnotes 290-98 and corresponding text for supporting information.
[290] Ada Testimony, *Transcript V*, p. 13.
[291] Ibid.
[292] Ibid. at 15.
[293] Ibid.

juvenile detention program and that additional funds could be used to pay for more counseling services.[294]

D. DYS reports that lack of transportation is a challenge for its juvenile participants and offenders who are not housed at DOC because they require transportation to get to medical or behavioral health appointments.[295]
E. There is no residential treatment facility for juvenile offenders.[296] While there is a psychiatric ward at CHCC, the ward is only for adult offenders.[297] Juvenile offenders with severe mental health disorders must, therefore, reside at DOC or at their home.[298]

Finding #6: Participants of, and individuals seeking to participate in, the Mental Health Court and Drug Court face barriers in accessing adequate mental health care.[299]

A. Many individuals seeking participation in the Mental Health Court and Drug Court find themselves ineligible for these programs[300] and, thus, cannot access the mental health care services provided through these programs.[301]
B. Lack of funding and budgetary constraints limit the number of participants that the Mental Health Court and Drug Court can accept.[302] Budget, however, is a secondary issue because, even if these programs were adequately funded to allow for more participants, there isn't enough healthcare and mental health care providers in CNMI to service all of the potential participants.[303]
C. The lack of treatment providers, again, is the biggest barrier for participants in the MHC and DC in receiving the mental health care they need.[304] The lack of mental health care providers results in lengthy wait times to be seen.[305]
    i. Some participants have co-occurring substance abuse disorders that require treatment to occur collaboratively between providers, which can be challenging because of the limited number of providers.[306]
    ii. Sometimes participants may not receive the exact type of care from a service provider that would suit them best, but this is due to the timeliness of the linkage of services; participants benefit from seeing a provider sooner rather than wait another three to four months for the perfect fit.[307]

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[294] Ibid.
[295] Ibid. at 14.
[296] Ibid.
[297] Ibid.
[298] Ibid.
[299] *See infra* footnotes 300-10 and corresponding text for supporting information.
[300] *See* Diaz Testimony, *Transcript V*, p. 7, Diaz Testimony, *PowerPoint V*, slide 4; Su Testimony, *Transcript II*, p. 4-6. The eligibility requirements of the MHC and DC limit who is accepted and provided mental health care through their programs.
[301] Arriola Testimony, *Transcript II*, p. 14; Hartig Testimony, *Transcript II*, p. 24.
[302] Su Testimony, *Transcript II*, p. 7; Diaz Testimony, *Transcript V*, p. 15.
[303] Su Testimony, *Transcript II*, p. 7.
[304] Su Testimony, *Transcript II*, p. 7; Diaz Testimony, *Transcript V*, p. 13, 15.
[305] Su Testimony, *Transcript II*, p. 7.
[306] Ibid.
[307] Ibid. at 15.

D. Lack of stable housing can be a barrier for some MHC and DC participants in accessing medical and mental health care services because, if a participant is busy prioritizing their basic needs like food and shelter, they are not likely to receive the mental health services they require.[308] Similarly, lack of transportation is a barrier for Drug Court participants attending their appointments.[309]
E. There is no residential treatment facility in the CNMI to assist Drug Court participants that may be going through the withdrawal phase of the recovery process.[310]

Finding #7: The CNMI fails to ensure that pretrial detainees have access to adequate health and mental health care, as well as ensure pretrial detainees are free from unnecessary medical care.[311]

A. It is unclear whether DOC conducts adequate health assessments during bookings to sufficiently identify and address health and mental health concerns of pretrial detainees arriving at DOC.[312]
   i. According to DOC, individuals arriving at DOC booking from the Department of Public Safety (DPS) are administered a health screening questionnaire by guards about their health and mental care needs.[313] If a DOC guard becomes aware of or suspects that an individual requires mental health care, DOC requests that DPS take the individual to CHCC for medical/mental health clearance before accepting the individual into DOC custody.[314]
   ii. If a pretrial detainee indicates that he/she takes medication or has a medical concern during the initial intake, a DOC guard will relay that information to the DOC doctor no later than the next business day.[315] DOC guards will accept medication, track down family to deliver the medication, or pick up medication from the CHCC pharmacy, if necessary.[316]
   iii. DOC also reports that it conducts a "full physical health assessment within 14 days of booking."[317]
B. Speakers report several concerns related to the CNMI cases that involve involuntary medication of pretrial detainees in competency determinations.[318]
   i. CNMI legislation and court rules and procedures related to pretrial competency cases (incl. criminal cases and civil commitment cases) do not provide clear guidance for

[308] Ibid. At 7.
[309] Diaz Testimony, *Transcript V*, p. 14.
[310] Ibid.
[311] *See infra* footnotes 312-333 and corresponding text for supporting information.
[312] *See infra* footnotes 313-17 and corresponding text for supporting information.
[313] Torres Written Testimony, Nov. 6, 2023, Email.
[314] Ibid.
[315] Ibid.
[316] Ibid.
[317] Torres Testimony, *Transcript IV*, p. 3-4.
[318] *See infra* footnotes 319-30 and corresponding text for supporting information.

pretrial detainees and does not adequately protect them from improper forced medication.[319]

a. When questions arise around a defendant's competency, the defendant is detained for a prolonged period of time without a probable cause hearing.[320] For example, despite being entitled to a probable cause hearing within a certain amount of time after arrest, an individual's criminal case is paused and does not progress to a probable cause hearing or arraignment if a question of their competency arises.[321]
    1) This pause in proceedings prevents the detainee's defense from conducting discovery and obtaining evidence from the investigation; this leaves the defense only with the information in the initial charging documents.[322]
b. In the case involving Aimin Zhang, the CNMI moved to involuntarily medicate him but filed their motion under seal and hid key information from the defendant and his counsel, including the type and dosage of medication to be administered.[323] Under *Sell*, the court is required to analyze several factors including, inter alia, whether there would be side effects from the medication to be administered and whether administering the medication was medically appropriate.[324] The court, in ruling on the CNMI's motion to involuntarily medicate Aimin Zhang filed under seal,[325] however, could not have properly applied the *Sell* standard when the defendant and his counsel were unable to properly argue the potential side effects or whether the medication was medically appropriate because they were never informed of the type or dosage of the medication to be administered.[326]
c. The speaker states that the rules related to whether treating physicians can conduct evaluations are unclear.[327]
d. CNMI legislation does not provide a clear statutory time limit for how long competency evaluations should take.[328]
e. Legislation is unclear and provides little guidance on where a defendant is to reside during the 180 days of receiving involuntary treatment.[329]
f. There is no appeal process or recourse for a pretrial detainee if a judge orders a defendant to be involuntarily medicated.[330]

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[319] Thomsen Testimony, *Transcript VIII*, p. 10, 22.
[320] Ibid. at 8-9.
[321] Ibid. at 4.
[322] Ibid.
[323] Ibid. at 5.
[324] *See supra* footnotes 139-41 and corresponding text for an in-depth discussion of the *Sell* standard.
[325] The judge that ruled in favor of involuntarily medicating Aimin Zhang did not specify the type or dosage of medication to be administered; instead, the judge simply deferred to the doctor's judgment. Thomsen Testimony, *Transcript VIII*, p. 7.
[326] Ibid. The judge stated, "I was not going to micromanage how best to carry out administration of medication and that the court finds and therefore orders that the treating doctors at CHCC have the training and experience to use their judgment on how to administer the medication and what medication." Ibid.
[327] Ibid. at 9.
[328] Ibid.
[329] Ibid. As a result, the defendant is bounced around between DOC and CHC. Ibid.
[330] Ibid. at 10.

C. There is no residential treatment facility in the CNMI.[331] While CHCC has a psychiatric ward for adults, CHCC does not accommodate pretrial detainees that require long-term stays such as those who are ordered involuntary medication.[332] These detainees that are completing competency evaluations and treatment via involuntary medication are often sent back-and-forth between CHCC and DOC because there is no residential treatment facility and legislation is unclear about which entity should have custody of these pretrial detainees.[333]

[331] Ibid. at 8.
[332] Ibid.
[333] Ibid. at 7-8.

Recommendations

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws, and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.[334] In keeping with these responsibilities, and given the testimony heard on this topic, the Committee submits the following recommendations to the Commission:

1. The U.S. Commission on Civil Rights should send this report and issue a formal request to Congress and the President to:

    a. Mandate/earmark a minimum of $3 million per year, with a sunset provision for five years to aid in meeting and ensuring access to adequate healthcare for incarcerated individuals within the CNMI's criminal justice system.
    b. Amend legislation to remove the Medicaid parity for the territories to remove the funding cap.

2. The U.S. Commission on Civil Rights should send this report and issue a formal request to the Northern Mariana Islands Governor's Office and Legislature to:

    a. Review and revisit the MOU/MOAs between the federal government and CNMI related to the cost of housing federal detainees in the CNMIs Saipan facility to ensure the rates match the actual costs to house the federal detainees.
    b. Continue to work to remove barriers within the CNMI code that hinder or prevent certain CNMI agencies from working together, like executing MOU/MOAs.
    c. Ensure that CNMI political appointees are indemnified for alleged constitutional or civil rights violations to ensure victims of these alleged violations receive appropriate redress. In the alternative, the legislature should pass legislation requiring all DOC commissioners to obtain insurance as a standard practice to, again, ensure victims of these alleged violations receive appropriate redress.
    d. Require Governor's nominees for DOC commissioners to have adequate experience and training, including demonstrated expertise in correctional rehabilitation strategies and inmate rehabilitation program development and implementation.
    e. Identify (and fund the position of) a DOC ombudsman within another agency, such as the Public Defender's Office or NMPASI, to provide adequate oversight over inmates' sick calls and grievances. For example, the ombudsman would be a centralized individual or agency that ensures prisoners' sick calls and grievances are adequately addressed and responded to, as well as verifying the delivery of health/mental health care services is adequate.

[334] 45 C.F.R. § 703.2 (2018).

f. Fund and/or build more long-term residential treatment facilities on Saipan. Currently, DOC houses many individuals that are not necessarily suited to reside at DOC because there is no alternative housing such as a long-term residential treatment facility. These individuals are typically involved in civil commitment proceedings or criminal proceedings where there is an issue regarding the defendant's competency.
g. Review and update the CNMI laws related to competency determination hearings in criminal proceedings and civil commitments.
h. Should the Medicaid funding cap be removed, the governor's office should amend the Medicaid state plan to be more expansive and include coverage of incarcerated individuals.

3. The U.S. Commission on Civil Rights should send this report and issue a formal request to the CNMI Department of Corrections to:

a. Conduct routine needs assessments, taking into consideration costs in dollar amounts, as well as time like wasted time, lack of employee retention, time spent on training/recruitment. DOC should then implement policies and practices that are recommended from the needs assessment.
b. Continually evaluate their level of staffing needs every 3-4 months because the required amount of healthcare can vary greatly depending on the inmate population.
c. While DOC should ensure its policies and practices mirror other successful DOC systems' policies and practices (e.g., Federal Board of Prisons and the California DOC), DOC should consider creative solutions for medical staff responsibilities because it's a small population. For example, a registered nurse could also serve as the healthcare administrator or a registered nurse could be present during the daytime shift, a licensed practical nurse could be present for the evening shift to ensure there's a nurse at the facility 24/7.
d. Publish its updated practices and procedures; specifically, related to the grievance procedure available to inmates.
e. Continue to improve transparency related to the delivery of health and mental health care to its inmates.
f. Ensure corrections officers are trained to support and collaborate with incarcerated patients on their treatment plans, as this fosters trust and improves adherence, leading to better outcomes.
g. Invest in a good electronic medical record system to streamline the delivery of care and coordination with CHCC. Also, better record keeping would ensure plaintiffs are able to prove their §1983 claims.
h. Allow inmates to have access to tablets to electronically submit sick calls or grievances. The sick calls and grievances would be sent directly to the appropriate unit/person and would allow easier oversight for DOC or the DOC ombudsman.

i. Establish some mechanism or operating procedure that provides better oversight of the delivery of medical care of the inmates; for example, requiring the DOC doctor and medical unit to regularly communicate with the DOC Commissioner and admin about the status of inmates' health and required healthcare services.
j. Obtain privilege for its medical unit to access CHCC's electronic health records for the inmates.
k. Continue to prioritize developing a Residential Substance Abuse Treatment Program within DOC.
l. Hire a new doctor.
m. Sign a MOA with the Department of Fire and Emergency Medical Services (DFEMS) to respond to inmates requiring lower levels of care, rather than sending them to CHCC.
n. Work with CHCC to obtain grant funding in order to provide proper nutrition and educate/promote nutritional guidelines within DOC.
o. Implement a policy that prohibits the DOC Commissioner from attempting to commute an inmate's sentence in order to avoid the responsibility of providing medical care to that inmate; particularly, after an inmate files a lawsuit against DOC seeking injunctive relief for the delivery of medical care.
p. Execute MOU/MOAs with other local agencies when possible.

4. The U.S. Commission on Civil Rights send this report and issue a formal request to the Commonwealth Healthcare Corporation to:

    a. Amend and expand the coverage of the Health Network Program to include off-island services for incarcerated individuals.
    b. Allow the DOC doctor to obtain privilege at CHCC to streamline the delivery of care to inmates.
    c. Execute a MOU/MOA with DOC.
    d. Collaborate with DOC Commissioner on opportunities to improve access to health care, mental health care, proper nutrition and other preventative care for inmates.

5. The U.S. Commission on Civil Rights should send this report to and issue a formal request to the CNMI Judiciary and Attorney General's Office to:

    a. Obtain education or training related to §1983 claims, and the relief available to plaintiffs.
    b. The Mental Health Court should consider potential creative alternatives to serve a wider population; for example, to accommodate more participants and ensure the safety of the Mental Health Court staff and service providers, Mental Health Court might consider using telehealth services for individuals.
    c. The Mental Health Court should expand their eligibility requirements to include less severe criminal charges, including petty or misdemeanor offenses.

6. The U.S. Commission on Civil Rights should send this report and issue a formal request to the CNMI Police Department and other first responders to:

    a. Provide more training for law enforcement first responders so that they are able to recognize and identify mental health conditions of individuals they are responding to. This training can prevent situations from escalating and can help more individuals get linked to the appropriate mental health services.
    b. Increase the budget for more Community Guidance Center training for law enforcement officers.

Commonwealth of the Northern Mariana Islands Advisory Committee to the

United States Commission on Civil Rights

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