

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

J.B., by and through his Next Friend)
LINDA WINDLEY, D.P. by and)
through his Next Friend)
STACEY BLEVINS, B.W. by and)
through his Next Friend JEANNA)
WALTERS, and J.J. by and through)
his legal guardian DENISE VICK,)
on behalf of themselves and those)
similarly situated, and DISABILITY)
RIGHTS NORTH CAROLINA,)

Plaintiffs,

v.

THE NORTH CAROLINA)
DEPARTMENT OF HEALTH AND)
AND HUMAN SERVICES and)
DEV DUTTA SANGVAI, in his official)
capacity as Secretary of the North)
Carolina Department of Health)
and Human Services,)

Defendants.

**FIRST AMENDED
COMPLAINT
– CLASS ACTION**

Case No. 1:24-cv-335

INTRODUCTION

1. Under the Fourteenth Amendment’s Due Process Clause, a person with a mental health disability who is charged with a crime and detained “solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a

substantial probability that he will attain that capacity in the foreseeable future.” *Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

2. In violation of this bedrock principle, North Carolinians with serious mental health disabilities¹ and other cognitive disabilities are languishing in jails for months, and in some severe cases, years at a time. Their prolonged detention extends well beyond what is reasonable under the circumstances for an evaluation and determination of whether they possess the requisite mental capacity to proceed to trial.

3. This is an action for declaratory and injunctive relief to reduce the profoundly harmful and unconstitutionally prolonged detention times experienced by people with mental health disabilities who have been charged with crimes and who await capacity evaluations or restoration services administered by the North Carolina Department of Health and Human Services (“NCDHHS”).

4. Plaintiff J.B., by and through his next friend and mother Linda Windley, Plaintiff D.P., by and through his next friend and mother Ms. Stacey Blevins, Plaintiff B.W., by and through his next friend and mother Ms. Jeanna Walters, and Plaintiff J.J., by and through his legal guardian and mother

¹ “Mental health disabilities,” often referred to as mental illnesses, encompasses psychiatric conditions including, but not limited to, schizophrenia, schizoaffective disorder, and bipolar disorder.

Denise Vick (collectively “Class Representative Plaintiffs”) bring this class action on behalf of themselves and those similarly situated under 42 U.S.C. § 1983, the Americans with Disabilities Act (“ADA”), and the Rehabilitation Act (“RA”). Plaintiff Disability Rights North Carolina (“DRNC”), the organization mandated under federal law to protect and advocate for North Carolinians with disabilities, asserts the same claims as the Individual Plaintiffs and the putative class. All Plaintiffs allege as follows:

5. NCDHHS, the agency charged with delivering services to people suspected of incapacity to proceed due to mental health disabilities or cognitive disabilities, is systemically violating the Fourteenth Amendment, ADA, and RA by failing to provide capacity evaluations and restoration services to pretrial detainees who are suspected of, or adjudicated to be, incapable to proceed (collectively, “ITP detainees”), in a timely and adequate manner. This manifests in two ways:

6. First, individuals in North Carolina who have been charged with a crime and whose capacity to stand trial is in question often spend months waiting for capacity evaluations by Local Management Entities / Managed Care Organizations (“LME/MCOs”) or Central Regional Hospital (“Central Regional”).

7. Second, individuals in North Carolina who have been charged with a crime, adjudicated incapable to proceed to trial, and ordered to a state psychiatric hospital to undergo an involuntary commitment examination or capacity restoration services wait months for bed space necessary to receive these court-ordered services.

8. Due to NCDHHS' failure to administer mental health evaluations, services, and treatment in a timely fashion at state hospitals or other appropriate integrated community settings, ITP detainees wait *an average* of two months² for their capacity evaluation to be completed and five to six months³ for treatment at a state psychiatric hospital. During such time, ITP detainees, who have not been adjudicated guilty of the charges against them, remain incarcerated and untreated. In fact, the wait times for bed space at licensed NCDHHS facilities can be so long that some ITP detainees spend more

² See Rachel Crumpler, *Is Charlotte train stabbing suspect mentally fit for trial? Court-ordered evaluation process may take months.*, NC Health News (Oct. 2, 2025), <https://www.northcarolinahealthnews.org/2025/10/02/charlotte-train-stabbing-suspect-capacity-to-proceed-mental-evaluation/#:~:text=More%20criminal%20defendants%20are%20being,NC%20Health%20News%20on%20Sept.>

³ See Rachel Crumpler & Taylor Knopf, *Who gets a bed in NC's state psychiatric hospitals — and who waits?*, NC Health News (Feb. 12, 2026), <https://www.northcarolinahealthnews.org/2026/02/12/who-gets-bed-in-nc-state-psychiatric-hospitals-and-who-waits/#:~:text=This%20bottleneck%20has%20caused%20the,NewsEmbed%20Created%20with%20Datawrapper>; see also N.C. Exec. Order No. 33 (Feb. 5, 2026).

time in pretrial detention awaiting a capacity evaluation and subsequent treatment than they ever would receive as a sentence if convicted.

9. Making matters worse, the number of beds in state facilities for people with mental health disabilities has declined significantly over the last decade. A report by the Treatment Advocacy Center, a non-profit organization that advocates for the needs of people with severe mental health disabilities, indicates that North Carolina's capacity fell from 892 to 453 beds between 2016 and 2023.⁴

10. As Governor Josh Stein recently recognized, 12 out of 47 patient units in NCDHHS's state psychiatric hospitals are not operating.⁵ Upon information and belief, NCDHHS has reported that out of the 901 state psychiatric hospital beds, about 600 beds are staffed.⁶ Estimates vary, but approximately 21 percent to 35 percent of beds are occupied by individuals who are clinically ready for discharge but remain unable to leave.⁷ Most often in

⁴ See Shanti Silver & Elizabeth Sinclair Hancq, *Prevention Over Punishment: Finding the Right Balance of Civil and Forensic State Psychiatric Hospital Beds*, Treatment Advocacy Center at 5 (Jan. 2024), <https://www.treatmentadvocacycenter.org/wp-content/uploads/2024/01/Prevention-Over-Punishment-Full-Report.pdf>.

⁵ N.C. Exec. Order No. 33 (Feb. 5, 2026).

⁶ Crumpler & Knopf, *supra* note 3.

⁷ See NCDHHS, LMEMCO/TP Dashboard, <https://www.ncdhhs.gov/lmemcotp-dashboardjan/open> (last visited Mar. 13, 2024); see also Crumpler & Knopf, *supra* note 3.

these instances, individuals who are ready for discharge are unable to be discharged because of a lack of appropriate services available in the community. The prolonged wait times for discharge tie up beds that are desperately needed by ITP detainees confined in local jails.

11. Defendants are charged with ensuring that LME/MCOs fulfill their statutory and contractual duties to develop and maintain adequate provider networks in the community to enable the timely transition of patients to community care so that hospital-based services can be provided to waiting patients. *See* 42 C.F.R. § 438.206(b)(1). However, they have failed to ensure that the community services necessary to enable discharges are consistently and promptly provided.

12. As a result of these systemic failures, North Carolina's ITP detainees who have severe mental health or cognitive disabilities are left in county jails and receive little to no treatment, which exacerbates their conditions. Plaintiffs J.B., D.P., B.W., and J.J. as well as Adam Anderson, Barbara Brown, Carl Cline, Devin Davis, Eliza Evans, and Gregory Gordon⁸ all ITP detainees whose experiences are discussed herein, have been left to

⁸ Except where otherwise noted, Plaintiffs have created pseudonyms to protect the privacy of the ITP detainees described here. Should the Court request disclosure of these individuals' real names, Plaintiffs will file appropriate motions under Local Rule 5.4 seeking leave to submit this information under seal.

languish in county facilities for prolonged periods of time waiting for NCDHHS to comply with its constitutional and statutory obligations.

13. County jails are intense and stress-inducing environments, generally not suitable for those diagnosed with any kind of debilitating ailment, let alone severe mental health disabilities. Prolonged detention in such environments can lead ITP detainees to experience further declines in their mental health, which can result in self-harm and other threats to ITP detainee safety.

14. This is a statewide crisis. NCDHHS's mismanagement and failure to provide essential mental health services on a timely basis exacerbates existing problems and inflicts cruel and unusual pain and suffering on ITP detainees who wait too long for the services NCDHHS legally is obligated to provide.

15. Governor Stein recently acknowledged that North Carolina ranks 38th nationally in access to mental health care.⁹ ITP detainees in North Carolina wait far longer for mental health services than similarly situated individuals in other states. In neighboring Virginia, for example, the average

⁹ N.C. Exec. Order, *supra* note 5.

reported wait time for an ITP detainee to receive a capacity evaluation is seven days.¹⁰

16. Plaintiffs bring this action against Defendant Devdutta Sangvai, NCDHHS Secretary, in his official capacity under 42 U.S.C. § 1983, for violations of the Fourteenth Amendment to the United States Constitution. Further, Plaintiffs assert claims against NCDHHS and Sangvai in his official capacity under 42 U.S.C. § 12132 for violations of Title II of the ADA and under 29 U.S.C. § 794(a) for violations of Section 504 of the RA.

JURISDICTION AND VENUE

17. Plaintiffs bring this action under 42 U.S.C. § 1983; the ADA, 42 U.S.C. § 12101 et seq.; and the RA, 29 U.S.C. § 701 et seq.

18. This Court has subject matter jurisdiction under 28 U.S.C. § 1331, which provides federal district courts original jurisdiction in civil actions arising under the U.S. Constitution and the laws of the United States, and 28 U.S.C. § 1343(a)(3), which provides federal district courts original jurisdiction in civil actions to redress the deprivation, under color of state law, of any right secured by the U.S. Constitution.

¹⁰ Silver & Hancq, *supra* note 4, at 10. This is the most recent publicly available report.

19. This Court has personal jurisdiction over Defendants because they are residents of North Carolina.

20. Venue is proper under 28 U.S.C. § 1391(b)(2) because Defendants are charged with administering court-ordered capacity evaluation, treatment, and restoration services throughout the state, including for all counties within the Middle District of North Carolina. Therefore, a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district. Furthermore, a substantial part of the events giving rise to the claims of Plaintiff class representatives occurred in this district. Plaintiff D.P. is incarcerated at Randolph County Detention Center in Asheboro, North Carolina in the Middle District of North Carolina.

PARTIES

I. Plaintiffs

a. J.B. – Awaiting Capacity Evaluation

21. Plaintiff J.B. is incarcerated in Pitt County Detention Center in Greenville, North Carolina, and is represented in this matter by his mother and next friend, Ms. Linda Windley. J.B. suffered a traumatic brain injury (“TBI”) on November 24, 2025, and since that time, Ms. Windley has supported him as he seeks treatment. Ms. Windley asserts these claims on J.B.’s behalf pursuant to Fed. R. Civ. P. 17(c)(2).

22. J.B. was arrested on January 29, 2026, after allegedly head-butting a nurse at his TBI recovery facility. On February 24, 2026, the court ordered J.B.'s mental capacity be evaluated at Central Regional Hospital; he still has not received this evaluation. Over 17 days later, J.B. remains incarcerated at the Pitt County Detention Center while he awaits this court-ordered capacity evaluation.

23. J.B. brings these claims on behalf of himself and a class of similarly situated individuals.

b. D.P. – Awaiting Capacity Restoration Services

24. Plaintiff D.P. is incarcerated in Randolph County Detention Center in Asheboro, North Carolina, and is represented in this matter by his mother and next friend, Ms. Stacey Blevins. D.P. is diagnosed with an unspecified psychotic disorder. Ms. Blevins has supported D.P. throughout his entire life, including providing financial support and ensuring his access to health care and housing. Ms. Blevins asserts these claims on D.P.'s behalf pursuant to Fed. R. Civ. P. 17(c)(2).

25. D.P.'s first involvement in ITP proceedings began in early March 2022, when he was arrested for second-degree trespass and detained in the Randolph County Jail. On March 7, 2022, the court ordered a capacity evaluation on its own motion based on D.P.'s behavior at his first appearance.

While awaiting that evaluation, D.P. remained incarcerated and served the full 20-day maximum sentence for the Class 3 misdemeanor despite never being convicted. Because he had already served the maximum sentence, the charges were dismissed upon his release, and D.P. was never evaluated.

26. D.P.'s second and current involvement in ITP proceedings began when he was arrested on May 14, 2025, for allegedly assaulting a law enforcement officer, disorderly conduct, and resisting arrest.

27. On June 4, 2025, D.P.'s court-appointed attorney moved for a capacity evaluation, and the court ordered a local forensic evaluation the same day. D.P. was evaluated on June 18, 2025, and the evaluator determined further evaluation was needed. On August 13, 2025, the assistant district attorney moved for an evaluation at Central Regional Hospital, which the court ordered that day. D.P. was evaluated via video conference on September 24, 2025, but the next day the court ordered an in-person evaluation. D.P. was evaluated at Central Regional Hospital on October 7, 2025. On December 10, 2025, D.P. was found incapable to proceed and ordered to Central Regional Hospital for restoration services. Since that date, D.P. has not received any restoration services.

28. Due to the inadequate quality of these capacity evaluations, D.P. waited in jail a total of 68 days.¹¹

29. Restoration services have not been provided. More than 92 days after being found incapable to proceed, D.P. remains incarcerated at Randolph County Detention Center awaiting court-ordered restoration services.

30. D.P. brings these claims on behalf of himself and a class of similarly situated individuals.

c. B.W. – Awaiting Capacity Restoration Services

31. Plaintiff B.W. is incarcerated at Gaston County Jail in Gastonia, North Carolina, and is represented in this matter by his mother and next friend, Ms. Jeanna Walters. Ms. Walters has cared for B.W. for his entire life, including seeking ongoing treatment and medication from multiple providers for his mental health diagnosis. Ms. Walters asserts these claims on B.W.'s behalf pursuant to Fed. R. Civ. P. 17(c)(2).

32. B.W. was arrested on November 15, 2024, after allegedly hitting his grandmother in the head while in a state of psychosis. In May 2025, a Central Regional Hospital evaluator conducted a fifteen-minute virtual capacity evaluation and found B.W. capable of proceeding. After meeting with

¹¹ This total only includes the days between the date a capacity evaluation was ordered and the date the final evaluation was completed.

B.W. more extensively, his court-appointed attorney believed he was profoundly incapable of proceeding and retained a private forensic evaluator. After several hours of evaluation and interviews with family members on September 16, 2025, the private evaluator concluded B.W. was incapable. On January 7, 2026, the court found B.W. incapable and ordered him transferred to Broughton Hospital for restoration services. As of the date of this amended complaint, he still has not received court-ordered services. Over 65 days later, B.W. remains incarcerated at Gaston County Jail, waiting for a bed at Broughton Hospital.

33. B.W. brings these claims on behalf of himself and a class of similarly situated individuals.

d. J.J. – Found ITP In Multiple Counties

34. Plaintiff J.J. is incarcerated at Cabarrus County Jail in Concord, North Carolina, and is represented in this matter by his mother and legal guardian, Ms. Denise Vick. Ms. Vick has cared for J.J. his entire life, including providing financial support, ensuring access to housing, and securing medical and mental health care. She was appointed J.J.'s legal guardian of the person on June 4, 2025, and asserts these claims on J.J.'s behalf pursuant to Fed. R. Civ. P. 17(c)(1)(a).

35. J.J.'s first involvement in ITP proceedings began July 11, 2023, in Cumberland County after his arrest for alleged possession of a controlled substance and attempted theft of an alternator. He was found incapable, and on January 17, 2024, the court ordered transfer to Cherry Hospital for restoration services. This transfer never occurred, and his charges were dismissed on January 14, 2025, after J.J. spent nearly a year in jail without receiving restoration services.

36. His second cycle began March 2025 in Wake County after a psychotic episode involving allegedly stealing from a McDonald's cash register. He was found incapable, and charges were dismissed on May 5, 2025, without him receiving any restoration services.

37. His third involvement in ITP proceedings began November 20, 2025, in Bertie County for allegedly possessing a stolen vehicle while under the delusion that he was a famous musician who needed a vehicle to go on tour. He was found ITP and charges were dismissed on February 19, 2026, without him receiving any restoration services.

38. J.J.'s fourth and current involvement in ITP proceedings began just four days after his last cycle ended. On February 23, 2026, J.J. was arrested in Cabarrus County for allegedly stealing a vehicle, possessing tools used in a burglary, larceny, and possession of marijuana. On February 24,

2026, his mother informed his court-appointed attorney that he had recently been found incapable of proceeding. J.J.'s next court date in Cabarrus County is scheduled for May 14, 2026.

39. J.J. brings these claims on behalf of himself and a class of similarly situated individuals.

e. Plaintiff DRNC

40. DRNC is the federally designated protection and advocacy agency charged with protecting the rights of people with disabilities in North Carolina. DRNC handles cases involving discrimination, abuse, and other violations of protected rights, providing services at no cost to North Carolinians with disabilities. DRNC is a private, independent, 501(c)(3) nonprofit, and a member of the National Disability Rights Network, the nonprofit membership organization for the federally mandated Protection and Advocacy System for individuals with disabilities.

41. As the protection and advocacy organization for North Carolina, DRNC is federally mandated and empowered to conduct monitoring and investigations in facilities where people with disabilities live and receive services and to pursue legal remedies on behalf of North Carolinians with disabilities. *See* 42 U.S.C. § 15043(a)(2)(A)(i); 42 U.S.C. § 15041, *et seq.*; 42 U.S.C. § 10801, *et seq.*; 29 U.S.C. § 794e.

42. More than half of DRNC's board of directors are individuals with disabilities or are family members, guardians, or advocates for people with disabilities. All of DRNC's mental health advisory council members are people with mental health disabilities, their family members, or both. The council is comprised of individuals from diverse geographic regions across North Carolina.

43. DRNC receives financial support from North Carolinians with disabilities.

44. DRNC conducts annual surveys of the disability community to collect input and determine the specific areas of advocacy on which the organization will focus, garnering responses from all 100 counties in North Carolina.

45. Members of the disability community have the right to file grievances if they disagree with actions taken by DRNC or if they are denied services by DRNC, which can result in a reversal of the organization's prior decision or action.

46. Defendants have failed to provide DRNC's constituents — including, but not limited to, Class Representative Plaintiffs J.B., D.P., B.W., and J.J., as well as class members Adam Anderson, Barbara Brown, Carl Cline, Devin Davis, Eliza Evans, and Gregory Gordon — timely capacity

evaluations and restoration services required by law, resulting in unnecessarily prolonged and harmful imprisonment in county jails. *See Timothy B. v Kinsley*, No. 1:22-CV-1046, 2024 WL 1350071, at *11 (M.D.N.C. Mar. 29, 2024) (“[g]iven DRNC’s statutory mandates, and the ability of DRNC’s constituents to influence its priorities and activities, this court finds that DRNC may sue on behalf of its constituents as a traditional membership organization may”).

47. J.B., D.P., B.W., J.J., and DRNC sue on behalf of ITP detainees in North Carolina who are detained in county jails for extended periods of time while they await ITP or involuntary commitment examinations and/or treatment at state psychiatric hospitals or other appropriate integrated settings.

II. Defendants

a. NCDHHS

48. NCDHHS manages the delivery of health-related services for all North Carolinians, including North Carolina’s most vulnerable citizens.¹²

49. NCDHHS has the statutory duty to provide the necessary management, policy development, and establishment and enforcement of

¹² NCDHHS, <https://www.ncdhhs.gov/> (last visited Mar. 13, 2026).

standards for the provision of services in the fields of public and mental health and rehabilitation with the intent to assist North Carolinians in achieving and maintaining an adequate level of health, social and economic well-being, and dignity. *See* N.C. Gen. Stat. § 143B-137.1.

50. NCDHHS, through the Division of State Operated Health Facilities (“DSOHF”) and the Division of Mental Health, Developmental Disabilities, and Substance Use Services, is charged with operating state facilities and overseeing other services for the evaluation and treatment of persons accused of crimes who have mental health disabilities or other cognitive disabilities that may affect their mental capacity (for example, a traumatic brain injury).¹³ Specifically, NCDHHS is responsible for administering and overseeing services necessary to determine an individual’s capacity to proceed, to assess criteria for involuntary commitment, and to provide treatment aimed at restoring capacity.¹⁴

¹³ *See* NCDHHS, *State Operated Healthcare Facilities: Facilities*, <https://www.ncdhhs.gov/divisions/state-operated-healthcare-facilities> (last visited Mar. 13, 2026).

¹⁴ *See* NCDHHS, *State Operated Healthcare Facilities: Psychiatric Hospitals*, <https://www.ncdhhs.gov/divisions/state-operated-healthcare-facilities/facilities/state-psychiatric-hospitals> (last visited Mar. 13, 2026); and, NCDHHS, *Mental Health, Developmental Disabilities, and Substance Use Services*, <https://www.ncdhhs.gov/divisions/mhddsus> (last visited Mar. 13 2026).

51. State-funded mental health, substance use disorder, and developmental disability services are provided in communities through one of four LME/MCOs approved by NCDHHS.¹⁵ See N.C. Gen. Stat. §§ 122C-115.4(a), (b), 122C-112.1(a)(1), (6)–(7). NCDHHS, through Defendant Sangvai, oversees and administers the LME/MCOs designated to provide forensic capacity evaluations for ITP detainees. See N.C. Gen. Stat. §§ 143B-138.1(b)(6), 143B-147.

52. Defendant NCDHHS is a public entity as defined by Title II of the ADA and constitutes a program or activity receiving federal financial assistance under the RA.

b. Dr. Devdutta Sangvai¹⁶

53. Defendant Devdutta Sangvai is the Secretary of NCDHHS. Defendant Sangvai oversees a department that has broad responsibility for all aspects of health and human services, a staff of 18,000 and an annual budget of \$38 billion.¹⁷ As the head of NCDHHS, Defendant Sangvai “may assign or

¹⁵ See NCDHHS, *Providers*, <https://www.ncdhhs.gov/providers/lme-mco-directory> (last visited Mar. 13, 2026).

¹⁶ Pursuant to Rule 25(d), NCDHHS Secretary Devdutta Sangvai is automatically substituted as a party for former NCDHHS Secretary Kody Kinsley, both of whom were named in their official capacities only.

¹⁷ NCDHHS, *Dr. Devdutta Sangvai*, <https://www.ncdhhs.gov/about/leadership/dr-devdutta-sangvain> (last visited Mar. 13, 2026).

reassign any function vested in him or in his department to any subordinate officer or employee of his department.” N.C. Gen. Stat. § 143B-10(a).

54. Defendant Sangvai is responsible for all management functions of NCDHHS and its subdivisions. *See* N.C. Gen. Stat. § 143B-10(e). This responsibility includes planning, organizing, delegating, directing, and reporting the activities of NCDHHS. *Id.* Defendant Sangvai oversees and administers the state’s provision of mental health care in local communities and state-run facilities. *See generally* N.C. Gen. Stat. § 122C-112.

55. Defendant Sangvai, in his official capacity, is a public entity as defined by Title II of the ADA and constitutes a program or activity receiving federal financial assistance under the RA.

FACTUAL ALLEGATIONS

I. Background

56. Prosecuting an individual who does not have the capacity to stand trial violates the Due Process Clause of the Fourteenth Amendment. *Pate v. Robinson*, 383 U.S. 375, 377–78 (1966).

57. To have capacity, a criminal defendant must have “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and a “rational as well as factual understanding of the proceedings against him.” *Dusky v. U.S.*, 362 U.S. 402, 402 (1960).

58. Under North Carolina law, “[n]o person may be tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner.” N.C. Gen. Stat. § 15A-1001(a). This condition is referred to by state statute as “incapacity to proceed.” *Id.*

59. In a criminal proceeding, the defendant, prosecutor, defense counsel, or court can make a motion at any time to question the capacity of the defendant. N.C. Gen. Stat. § 15A-1002(a). Upon such a motion, the criminal court must hold a hearing to determine the defendant’s capacity to proceed. N.C. Gen. Stat. § 15A-1002(a)(b)(1).

60. To help determine capacity, the criminal court may appoint medical experts, including local forensic evaluators, to perform a capacity evaluation and produce a report for the court. N.C. Gen. Stat. § 15A-1002(b)(1a). If the court orders a capacity evaluation, the capacity hearing cannot be held until after the evaluation. N.C. Gen. Stat. §15A-1002(b)(1).

61. If a person who may be ITP is charged with a felony, the criminal court also may order the defendant to a state facility for the mentally ill for

“observation and treatment” not to exceed 60 days. N.C. Gen. Stat. § 15A-1002(b)(2).

62. To assess capacity, the criminal court inquires whether the defendant can:

- a. understand the nature and object of the proceedings;
- b. comprehend his or her situation in reference to the proceedings; and
- c. assist in his or her defense in a rational or reasonable manner.

See N.C. Gen. Stat. § 15A-1001(a). If the court determines that a defendant is unable to satisfy one or more of these criteria, the defendant is incapable to proceed. *Id.*

63. If the criminal court determines that a person is incapable to proceed, North Carolina law requires that the court next determine whether there are “reasonable grounds to believe the defendant meets the criteria for involuntary commitment under Part 7 of Article 5 of Chapter 122C.” N.C. Gen. Stat. § 15A-1003(a).

64. The following criteria for involuntary commitment (“IVC”) are evaluated by a mental health professional authorized by NCDHHS to conduct IVC examinations:

- a. (for inpatient commitment) the person is mentally ill and is a danger to themselves or others, N.C. Gen. Stat. § 122C-268(j); or,

- b. (for outpatient commitment) the person is mentally ill and needs treatment to prevent deterioration that would result in dangerousness, N.C. Gen. Stat. § 122C.261(b).

65. Where an examiner determines that a person meets criteria for inpatient commitment, the person may be detained temporarily in a 24-hour facility designated by NCDHHS.¹⁸ N.C. Gen. Stat. § 122C-263(d)(2). However, a civil district court, not the criminal court, will decide whether a person will be involuntarily committed after an appropriate hearing. N.C. Gen. Stat. §122C-268(a).

66. In practice, the ITP and IVC processes are intertwined, reflecting legislative intent to comply with the limits on non-therapeutic detention announced in *Jackson v. Indiana*. As the *Jackson* Court held:

[A] person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, *then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen or release the defendant.*

¹⁸ A "24-hour facility" is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals. N.C. Gen. Stat. § 122C-3(14)(g). State law governing IVC procedures authorizes the NCDHHS Secretary to designate 24-hour facilities "for the custody and treatment of involuntary clients" and specifies that [d]esignation of these facilities shall be made in accordance with rules of the Secretary that assure the protection of the client and the general public." N.C. Gen. Stat. Ann. § 122C-252.

Furthermore, even if it is determined that the defendant probably soon will be able to stand trial, his continued commitment must be justified by progress toward that goal.

406 U.S. 715, 738 (internal citation omitted) (emphasis added).

67. The North Carolina General Assembly expressly drafted the ITP statutes to ensure compliance with *Jackson's* mandate:

In order to accomplish [*Jackson's*] requirements, this Article provides that when the trial court determines that the defendant does not have capacity to proceed, it will direct the initiation of civil commitment proceedings. *This will eliminate the possibility that a defendant suffers extended commitment simply because he has been accused of a crime. Thus the defendant who is not dangerous, but who lacks capacity for trial, can be released.* That result is required by the *Jackson* case. What the criminal court can do is to enter appropriate orders to provide for the return of the defendant for trial, as it can do for any other defendant.¹⁹

68. Thus, after finding a defendant ITP, a criminal court judge must determine whether there are reasonable grounds to believe the defendant meets the criteria for involuntary commitment. If that judge finds reasonable grounds, they must initiate the IVC process by entering a custody order that requires the ITP defendant to undergo an IVC examination. From this point on, IVC proceedings are governed by the civil involuntary commitment statutes (Part 7 of Article 5 of Chapter 122C). *See* N.C. Gen. Stat. § 15A-1003.

¹⁹ North Carolina General Statutes, Article 56. Incapacity to Proceed. CRIMINAL CODE COMMISSION COMMENTARY (available at https://www.sog.unc.edu/sites/default/files/course_materials/StatutesandForms.pdf) (emphasis added).

69. Under the civil IVC process, the ITP defendant must be examined by a mental health professional to determine if they meet the IVC criteria and should be involuntarily committed. *See* N.C. Gen. Stat. § 122C-263(c). A civil district court, separate from the criminal court, then reviews the medical professional's examination results and other relevant evidence at a district court hearing. N.C. Gen. Stat. § 122C-268. If the district court finds that an ITP defendant meets the standard for involuntary commitment, the defendant is committed to state-designated mental health facility. N.C. Gen. Stat. § 122C-271(b)(2).

70. Upon information and belief, during an ITP detainee's commitment at a state psychiatric hospital for IVC proceedings, they may receive restoration services.

71. After an ITP detainee receives restoration services, they are reevaluated to determine whether their capacity has been restored. If capacity is restored, the ITP detainee's criminal case continues.

72. If an ITP detainee does not meet the involuntary commitment standard, and there is not a substantial probability of capacity restoration in the foreseeable future, the ITP detainee must be released under *Jackson*.

73. Notably, even if an individual's capacity is not restored during IVC proceedings, North Carolina law allows the state to reinitiate criminal

proceedings against an individual who later regains capacity. Any facility housing an ITP detainee with active criminal charges remains under “appropriate orders to safeguard the defendant and to ensure his return for trial” should they regain capacity. N.C. Gen. Stat. § 15A-1004(a). These orders “must require and provide for the return of the defendant to stand trial in the event that he gains capacity to proceed[.]” N.C. Gen. Stat. § 15A-1004(e).

II. ITP Detainees are Frequently Jailed for Months Awaiting Court-Ordered Capacity Evaluations and Restoration Services that Defendants are Obligated to Provide.

74. ITP detainees often languish in jail for prolonged periods of time during the ITP process. They remain in jail as they wait for judges to order capacity evaluations. And, since 2022, ITP detainees wait an average of more than two months for their report to be completed after their evaluation is ordered. If detainees are found to be ITP, they spend on average five to six months in jail awaiting placement in state psychiatric hospitals for IVC examination and capacity restoration services.

75. Dr. Robert Cochrane, Statewide Director of the Forensic Services at DSOHF, has acknowledged “Many people do sit months and months, over a

year, not getting the treatment that they need, . . . [a]nd the jails . . . just don't have the resources. You know, they're not hospitals, they're not clinics.”²⁰

a. Delays Awaiting Initial Capacity Evaluations.

76. Initial capacity evaluations are conducted either by local forensic evaluators through LME/MCOs or evaluators at Central Regional.

77. Defendant NCDHHS is the single state agency responsible for the oversight of the LME/MCOs that provide mental health services, including the local forensic evaluators who are charged with conducting capacity evaluations. Defendants have the authority and responsibility to ensure that each LME/MCO maintains an adequate number of providers to deliver all necessary services in a timely manner.

78. As of the date of this filing, there are four LME/MCOs responsible for initial capacity evaluations: (1) Vaya Health; (2) Trillium Health Resources; (3) Partners Behavioral Health Management; and (4) Alliance Health.

79. Central Regional conducts capacity evaluations only for individuals charged with felonies.

²⁰ Lyons, Kelan, *Experts: Lack of mental health services is spurring a 'capacity crisis' in NC Jails*, NC Newsline (Apr. 4, 2024), <https://ncnewsline.com/2024/04/04/panel-discusses-the-capacity-crisis-facing-many-of-those-in-nc-jails/?emci=e8fd6c9b-1cf2-ee11-aaf0-002248089b1e&emdi=c2928ad7-7af2-ee11-aaf0-002248089b1e&ceid=238938>.

80. Due to the lack of publicly available data, the exact number of individuals currently waiting for a capacity evaluation is unknown.²¹ Upon information and belief, however, the number is expected to exceed 100 individuals. Available data shows that in 2025, 1,951 capacity evaluations were completed.²² Approximately 55 percent of those individuals — nearly 1,100 people — were determined incapable of proceeding to trial and therefore required admission to a state psychiatric hospital for capacity restoration services.²³

81. From January 2022 to present, ITP detainees waited an average of 68 days from the day the LME/MCO or Central Regional received the order for their capacity evaluation until the LME/MCO (or Central Regional) issued its capacity evaluation report.

82. Individuals charged with felonies often wait almost twice as long for their capacity evaluations to be completed, as Central Regional takes an average of 127 days to complete a capacity evaluation report after receiving an evaluation order. This data point is from 2024 and is the most recent figure available.

²¹ Crumpler & Knopf, *supra* note 3.

²² *Id.*

²³ *Id.*

83. To make matters worse, upon information and belief, local capacity evaluations are often deemed inadequate by the criminal court, necessitating a referral for a *second* capacity evaluation at Central Regional. These second evaluations further delay the capacity hearing and restoration process for the person under evaluation, increase the amount of time the person spends in jail and the harms of incarceration, and further bog down the criminal legal system.

84. On February 10, 2026, Lisa Coltrain for the North Carolina Conference of District Attorneys testified at a North Carolina House Committee meeting that:

“[T]he local evaluations are often inadequate . . . some of these evaluation[s] are coming back a page or two, making these very serious determinations about whether we can hold somebody criminally responsible . . . the ones we get back from Central regional are generally 20 pages or more. And so[,] it causes a lot of question[s] and concern[s] about the training and ability of these local forensic evaluators . . . And a lot of these local evaluations are getting challenged more often because they don't seem to be up to the level that we want to be satisfied for ourselves that this person is actually incapable to proceed.”²⁴

²⁴ Lisa Coltrain, Testimony before the N.C. House Select Committee on Involuntary Commitment and Public Safety, Appropriations Committee Room, Feb. 10, 2026, at 1:26 PM.

85. On information and belief, Defendants have failed to hold LME/MCOs accountable for the lack of available qualified providers to conduct local capacity evaluations.

b. Delays Awaiting Restoration Services Conducted by State Psychiatric Hospitals.

86. Approximately 60 percent of individuals evaluated in 2024 — over 1,500 people — were deemed incapable of proceeding to trial and needed capacity restoration services.²⁵

87. Central Regional is one of North Carolina’s three state psychiatric hospitals and is the only one to operate a forensic services unit dedicated to the examination and treatment of people who are facing criminal charges. The other state psychiatric hospitals, Broughton Hospital (“Broughton”) and Cherry Hospital (“Cherry”), do not have a forensic services unit and do not conduct initial capacity evaluations.²⁶

88. From 2016 to 2023, the number of state psychiatric beds in North Carolina decreased by about 51%.²⁷ NCDHHS has not publicly revealed more recent data.

²⁵ Crumpler & Knopf, *supra* note 3.

²⁶ While Broughton and Cherry do not have a dedicated forensic unit for ITP individuals facing charges, these hospitals still provide restoration services. Broughton provides restoration services for ITP detainees in the western part of the state and Cherry services the eastern part of the state.

²⁷ See Silver & Hancq, *supra* note 4, at 5.

89. Since at least 2017, wait times for capacity evaluations and restoration services at state psychiatric hospitals have increased steadily.

90. Central Regional's forensic unit is operating at reduced capacity. Central Regional has been limiting admissions to the hospital and the forensic unit for over a year due to staffing shortages. Upon information and belief, Central Regional's staff includes only eight forensic evaluators.²⁸

91. Because of the above-referenced staffing issues, Central Regional does not utilize all forensic unit beds. For example, in 2024 (the most recent year for which data is available), only 65% of forensic beds were in use.

92. During the COVID-19 pandemic, DSOHF reduced the available forensic service beds to 78 in total (58 for males and 20 for females). Capacity has not been restored to the full 120 available beds. In 2024, the latest year for which data is publicly available, the capacity of the forensic unit was between 75 and 78 beds.

93. As a result, individuals with mental health disabilities or other cognitive disabilities wait months for placement at Central Regional to undergo a capacity evaluation or receive restoration treatment services.

94. From 2022 to 2024, the average wait time from a court order for restoration services to placement at any of the state's three psychiatric

²⁸ Coltrain, *supra* note 21.

hospitals was 145 days — almost five months. This situation has not improved: during the first quarter of fiscal year 2026 — from July to September 2025 — the average wait time before admission for capacity restoration was 148 days.²⁹

95. As of January 22, 2026, 122 people deemed incapable to proceed were waiting for admission to a state psychiatric hospital for restoration services.³⁰

96. Although current law allows for community-based restoration, such services are not made widely available by Defendants' LME/MCO contractors. Instead, Defendants operate three community-based restoration “pilot programs,” in Mecklenburg, Wake, and Cumberland Counties. Collectively the programs treated only 16 patients as of July 2025.

97. Defendants also operate three jail-based restoration programs in the Mecklenburg County Detention Center (25 beds), Pitt County Detention Center (10 beds), and Wake County Detention Center (10 beds), even as they acknowledge that jail is not an appropriate setting for those in mental health crises.

²⁹ Crumpler & Knopf, *supra* note 3.

³⁰ *Id.*

III. Delays Awaiting Involuntary Commitment Examination and/or Treatment.

98. ITP detainees also face long delays and significant time in local jails awaiting transfer to a state psychiatric hospital for IVC examinations.

99. Upon information and belief, many ITP detainees are placed on a wait list for placement at a 24-hour facility for IVC examinations. During this waiting period, many ITP detainees spend months incarcerated in local jails that are not equipped to provide the intensive mental health care they need.

100. Upon completion of the IVC examination, the superior court clerk is required to schedule the district court IVC hearing and appoint counsel for IVC proceedings.³¹ N.C. Gen. Stat. §§ 122C-264(b)–(d). These duties — necessary to move the ITP detainee’s case forward and prevent extended detention — are only triggered when the clerk receives the findings from the state-provided IVC examination.

101. While awaiting IVC examinations, many ITP detainees remain in a due process “limbo,” without legal representation or a scheduled hearing. This limbo exists because their criminal case is paused while they are processed through the civil commitment proceedings, but their legal

³¹ Counsel appointed in an ITP detainee’s criminal case ordinarily does not represent the detainee in civil IVC proceedings, which take place in a different court.

representation in the IVC proceedings does not begin until the IVC examination is complete and an IVC hearing is scheduled.

IV. Delays will likely increase due to the enactment of HB 307.

102. In fall 2025, the General Assembly enacted Session Law 2025-93, House Bill 307, Section 1(c) (“HB 307”), amending multiple provisions of North Carolina law governing pretrial release and involuntary commitment (“IVC”) procedures.

103. HB 307 will substantially harm ITP detainees in three critical ways. First, it authorizes continued detention of ITP detainees even after they have served the maximum possible sentence for their pending charges. Second, it creates a new procedural requirement for ordering involuntary commitment examinations at the time of arrest if certain conditions are met. Third, it adds steps to the release requirements for individuals held in 24-hour psychiatric facilities.

104. HB 307 authorizes continued detention of individuals found ITP even after they have served the maximum possible sentence for their pending charge. Prior to HB 307, N.C. Gen. Stat. § 15A-1008 required release once the maximum sentence had been served.

105. HB 307 now permits a district attorney to seek a judicial determination of whether the person requires an involuntary commitment

examination pursuant to N.C. Gen. Stat. § 15A-1003. As a result, ITP detainees may remain incarcerated well beyond the statutory maximum applicable to their charge while awaiting that hearing and judicial determination. *See* N.C. Gen. Stat. § 15A-1003(a1). This provision became effective on December 1, 2025.

106. Starting in December 2026, HB 307 amends N.C. Gen. Stat. § 15A-533 to require a judicial official to order an examination by a commitment examiner if either of the following conditions is met: (1) the defendant is charged with a violent offense and has been subject to an involuntary commitment order within the preceding three years, or (2) the defendant is charged with any offense and the judicial official has reasonable grounds to believe the defendant is a danger to self or others. For the purposes of providing clarity, these detainees will be referred to as “IVC individuals.”

107. Although this provision concerns involuntary commitment rather than incapacity to proceed, it directly affects detainees who have been found to be ITP because the same NCDHHS-operated examination system is charged with assessing and serving both IVC individuals and ITP individuals.

108. By increasing the number of individuals subject to mandatory involuntary commitment examinations under HB 307, the new law will place additional strain on an already overburdened wait list.

109. HB 307 also adds steps for release from 24-hour psychiatric facilities. Beginning in December 2027, individuals with a prior conviction for a violent offense within the past ten years who also have been subject to an involuntary commitment order within the past five years may not be released from the 24-hour facility prior to their civil involuntary commitment hearing. At the hearing, a physician must certify compliance with several new statutory requirements, including the existence of a housing plan, before the individual under a commitment order can be released.

110. Previously, many such individuals would have been released following their examination, pending their civil involuntary commitment hearing. Under HB 307, they will remain confined to the 24-hour facility until staff can certify compliance with the new requirements. Without a corresponding effort by NCDHHS to ensure examination and treatment capacity, this extended confinement will slow bed turnover in 24-hour facilities. ITP detainees who already have experienced delays in receiving capacity evaluation and delays in receiving restoration services, will experience further delays due to additional strains on the same resources.

111. HB 307 does not provide additional funding for the mental health system as a whole or for any of the components of the ITP or involuntary commitment processes.

112. In the absence of action by Defendants to meet current and pending obligations, the increased demand will exacerbate existing bottlenecks within the psychiatric system.

113. The foreseeable result will be longer delays in examination, transfer, and admission to appropriate facilities for all individuals within the system, including ITP detainees.

114. As waitlists lengthen for involuntary commitment, individuals adjudicated ITP remain confined after already enduring the lengthy wait times of the ITP evaluation process.

115. “When you think about [HB 307], we are fully expecting, along with other inpatient hospitals, to see an increase in demand,” said Karen Burke, DHHS deputy secretary for facilities and licensure, during a legislative committee meeting about the involuntary commitment process.³² NCDHHS has not indicated that it has a plan to address the increase in demand.

116. Burke added, “We’re going to need to optimize our discharges. We’re going to need to operate more beds, and then we’re going to have to be creative about our operational structure that we have currently in place.”³³

³² Luciana Perez Uribe Guinassi, *‘Tryna’s Law’ to increase demand on strained NC mental health system, officials say*, The News & Observer (Dec. 17, 2025), <https://www.newsobserver.com/news/politics-government/article313786643.html>.

³³ *Id.*

V. The Significant Harms of Prolonged Detention in County Jails that are Not Equipped to Treat ITP Detainees.

117. The extended incarceration of ITP detainees in jails, arising in large part from Defendants' inadequate provision of evaluation and treatment services, places the burden on county jail administrators and personnel to meet the mental health needs of these individuals and keep them safe.

118. Almost all county jails lack the resources, staff, and training necessary to provide services for individuals with serious mental health disabilities. As a result, the long detention of ITP detainees in jail frequently exacerbates their mental health disabilities.

119. Detained for long periods of time without appropriate mental health care or restoration services, people with serious mental health disabilities often will decompensate, increasing their risk of harm and making capacity restoration more difficult.

120. Because people who have severe mental health disabilities or other cognitive disabilities often have problems following jail rules and regulating their conduct, jail staff frequently resort to using solitary confinement, restraints, or other extreme confinement and isolation measures to manage physical aggression, outbursts, or other problematic behaviors. Use of these

measures, especially if prolonged, increases the risk of further decompensation and self-harm and inherently increases segregation within the jail.

121. When housed among other jail detainees, people with mental health disabilities and other cognitive disabilities are especially vulnerable to manipulation, threats, and aggression by others.

122. Compounding the problem, some North Carolina jails are overcrowded, posing safety risks to mentally ill detainees and those around them. In an interview, Wake County Sheriff Willie Rowe commented: “We house inmates in cells, and sometimes due to limited space, we have to house them outside of the cells So we provide bedding that’s placed in the open areas, and that’s where they’ll be sleeping.”³⁴ On November 16, 2025, Alamance County Sheriff Terry Johnson terminated the County’s agreement with U.S. Immigration and Customs Enforcement to house federal detainees, stating “[HB 307] materially affect[s] our ability to manage classification, housing, and supervision of detainees in our facility and will require us to prioritize bed space and resources for local and state inmates and remain

³⁴ Tom George, *Wake County jails near capacity; sheriff calls for long-term fix*, ABC 11 (Feb. 28, 2024), <https://abc11.com/jail-overcrowding-wake-county-willie-rowe-detention-center/14476666/>.

compliant with state law and court directives.”³⁵ In a January 14, 2026 letter, Buncombe County Sheriff Quentin E. Miller sought assistance from fellow sheriffs to temporarily house defendants from Buncombe County citing overcrowding due to changes wrought by HB 307.³⁶

123. Each year, at least half of North Carolina jails undergoing biannual inspections fail, often for issues such as overcrowding and failure to adequately supervise detainees.

124. Many jails house more people than they were designed to hold, and others are so severely understaffed they cannot control the flow of contraband or maintain jail safety, leading to an increase in violent incidents.

125. Dozens of people die in North Carolina jails every year, often by suicide. North Carolina’s Division of Health Services Regulation (“DHSR”) death inspections reveal lack of proper supervision of detainees in a substantial number of such death inspections.

³⁵ Mark Price, *Alamance County jail ends agreement to house ICE detainees, NC sheriff says*, The News & Observer (Nov. 20, 2025), <https://www.newsobserver.com/news/state/north-carolina/article312989840.html>.

³⁶ See Shelly Garzon & Jennifer Emert, *Buncombe County sheriff seeks help from other counties amid jail overcrowding*, ABC 13 News (Jan. 16, 2026), <https://wlos.com/news/local/story/buncombe-county-seeks-help-north-carolina-nc-counties-jail-overcrowding-worsens-detention-center-sheriffs-office-quentin-miller-letter-inmates-regulations-prison-system>.

126. On September 2, 2025, Orange County Sheriff Charles S. Blackwood discussed the impact of having people with mental health disabilities incarcerated in his facility for prolonged periods of time. He wrote:

“Those in our care who desperately need treatment sometimes languish in our facility, often experiencing severe declines in their level of functioning. Jail, after all, is a place of isolation, and that experience — already difficult for most people — can be dangerous for those with mental illness. Some of our detainees suffer so severely and decline so precipitously that they engage in deeply disturbing behaviors, some of which involve their own excrement.”³⁷

127. In January 2026, Eddie Caldwell Jr., Executive Vice President and General Counsel for the North Carolina Sheriffs’ Association, acknowledged that many individuals might not be incarcerated at all if their medical needs were addressed.³⁸

VI. Defendants’ Failure to Provide Timely Evaluations and Services Harms ITP Detainees, including Class Representative Plaintiffs.

128. Defendants’ failure to provide timely evaluation and treatment services to ITP detainees inflicts a terrible toll, as illustrated by the experiences of Plaintiffs and those similarly situated:

³⁷ Charles Blackwood, *Lowdown: Detention center staff sees rising challenges*, News of Orange (Sept. 2, 2025), https://www.newsfororange.com/community/article_456be62c-04ab-41f1-bf8e-088c54c7470d.html.

³⁸ Guinassi, *supra* note 32.

a. Class Representative Plaintiffs' Experiences

i. Plaintiff J.B.

129. Plaintiff J.B. is a 42-year-old man with two children, a 14-year-old son and a 9-year-old daughter.

130. On November 24, 2025, J.B. suffered three brain bleeds and two skull fractures, resulting in a traumatic brain injury (“TBI”) after flipping over the handlebars of his motorbike when he hit a pothole. Following the injury, J.B. spent 20 days in the intensive care unit before being transferred to an intermediate care room in the same hospital. He has since been diagnosed with cognitive impairment secondary to the TBI.

131. Since his traumatic brain injury, J.B. has become increasingly verbally and physically aggressive, resulting in regular restraints. On or around January 29, 2026, J.B. allegedly head-butted his nurse while she was securing his restraints, causing her physical injury. He was arrested and detained at the Pitt County Detention Center on the same day.

132. J.B. was appointed a public defender on February 3, 2026, and had an introductory phone call shortly thereafter. Based on that conversation, his attorney became concerned that he lacked the capacity to proceed.

133. On February 24, 2026, J.B.’s attorney filed a motion for a capacity evaluation at Central Regional Hospital. The court granted the motion on the

same day. J.B. has remained in custody at the Pitt County Detention Center in Greenville, North Carolina since February 24, 2026, waiting for the capacity evaluation.

134. J.B.'s mother and next friend, Ms. Linda Windley, his children, his brother, and his sister-in-law are deeply concerned for his well-being. Ms. Windley believes that his confusion has worsened during his incarceration. He does not understand where he is and has not spent any of the money added to his commissary account.

135. As of the date of this filing, J.B. has been incarcerated for over 17 days waiting a court-ordered capacity evaluation.

ii. Plaintiff D.P.

136. Plaintiff D.P. is a 30-year-old man who first started hallucinating and exhibiting psychotic symptoms at around 16 years of age. His mother, Ms. Stacey Blevins, sought mental health treatment for him on multiple occasions, and he was formally diagnosed with an unspecified psychotic disorder. Around age 17, D.P. was involuntarily committed to Old Vineyard Behavioral Health Services in Winston-Salem, North Carolina. At that time, he was also charged with misdemeanor marijuana possession, which was dismissed due to his commitment.

137. Since that time, D.P. has had recurring mental health crises and has been involuntary committed several times.

138. D.P.'s first involvement in ITP proceedings began in early March 2022, when he was arrested for second-degree trespass and detained in the Randolph County Detention Center. At that time, D.P. lived with his mother and next friend, Stacey Blevins, and his younger sister in a trailer park in Randolph County. He was experiencing psychosis and paranoid delusions and would walk through the park at night, looking through windows and crawling under other trailers.

139. During D.P.'s first appearance on March 7, 2022, the judge noted that he "appeared confused and unaware of his surroundings" and ordered a capacity evaluation. D.P. remained incarcerated and served the full 20-day maximum sentence for the Class 3 misdemeanor despite never being convicted. Because he had already served the maximum sentence, the charges were dismissed upon his release, and D.P. was never evaluated.

140. On June 26, 2022, D.P. was again charged with second-degree trespass at the trailer park. He was convicted on November 9, 2023, and sentenced to 15 days in jail and probation. After his release, D.P. became unhoused and ultimately stayed at Shelter of Hope, a homeless shelter in Asheboro, North Carolina. During this period, he experienced another period

of psychosis and underwent a court-ordered mental health assessment at Zen Counseling on May 31, 2024.

141. D.P.'s second and current involvement in ITP proceedings began on May 14, 2025. On that day, while driving home from a probation hearing, D.P. experienced a psychotic episode and became aggressive with his mother. She called the police for his and her safety and explained his mental illness and psychotic state to the officers. When the officers arrived, D.P. allegedly assaulted an officer. He was arrested and charged with assault, disorderly conduct, and resisting a police officer. D.P. was detained in Randolph County Jail in Asheboro, North Carolina.

142. On June 4, 2025, D.P.'s court-appointed attorney filed a motion for a capacity evaluation. The court ordered a local forensic evaluation the same day, which was conducted by Daymark Recovery Services on June 18, 2025. The evaluator determined that further evaluation was needed.

143. On August 13, 2025, the assistant district attorney moved for D.P. to be evaluated at Central Regional Hospital. The court ordered the evaluation that same day. D.P. was evaluated via video conference on September 24, 2025. On September 25, 2025, the court ordered an in-person evaluation, which was conducted at Central Regional Hospital on October 7, 2025.

144. On December 10, 2025, a capacity hearing was held, and D.P. was found incapable to proceed and ordered to Central Regional Hospital for restoration services. Since that date, he has remained in Randolph County Jail without receiving any restoration services.

145. D.P. remains incarcerated in the close-security unit, akin to solitary confinement, while waiting for a bed at Central Regional Hospital. Due to his mental health diagnosis and past incidents, he is not permitted access to the personal tablets provided to other detainees, which enable communication with family members and friends outside the jail. Instead, D.P. must use the common-area phone to speak with family, but his mental illness prevents him from doing so. He suffers from paranoid delusions and frequently struggles to be around other people.

146. D.P.'s next friend and mother, Ms. Stacey Blevins, has observed D.P.'s decompensation during his incarceration, noting that his paranoid delusions and agitation have worsened. This has caused significant hardship for D.P. and his family, who remain concerned for his mental health and wellbeing.

147. As of the date of this filing, D.P. has been incarcerated for over 90 days without receiving court-ordered restoration services.

iii. Plaintiff B.W.

148. Plaintiff B.W. is a 20-year-old man who has been diagnosed with paranoid schizophrenia. He was first diagnosed at age 16 and has been civilly committed at least once since that diagnosis. He also has a genetic condition that prevents him from metabolizing common antipsychotic medications, requiring several doctors to find one that works.

149. Since his diagnosis, his mother, Ms. Jeanna Walters, has taken B.W. to all doctors' appointments, filled his prescriptions, and supported him in school, including ensuring he completed his high school degree. Despite these efforts, B.W.'s illness caused periods of decompensation, including incidents of psychosis and minor legal violations, for which he was civilly committed.

150. On November 15, 2024, while in a state of psychosis, B.W. allegedly hit his grandmother on the head. He was arrested and detained at Gaston County Jail. On December 23, 2024, while in custody, he was charged with assaulting a detention officer and resisting a public officer. B.W.'s public defender filed a motion to have his capacity evaluated on or around December 27, 2024. B.W. was then transferred to Central Prison for safekeeping in February 2025.

151. In May 2025, a Central Regional Hospital evaluator met with B.W. virtually for approximately 15 minutes and concluded he had the mental capacity to proceed. After further direct interaction with B.W., his attorney believed he remained profoundly incapable of understanding the proceedings against him and incapable of assisting in his own defense. B.W.'s attorney retained a private forensic evaluator, who met with B.W. for several hours on September 16, 2025, and spoke with the family before concluding that he was incapable.

152. On November 10, 2025, the court held an *in camera* hearing to review B.W.'s historical medical records.

153. The court held a capacity determination hearing on January 7, 2026, during which it found B.W. ITP and ordered his transfer to Broughton Hospital for restoration services.

154. During a recent visit with B.W., Ms. Walters observed bruises on B.W.'s hands and face. Ms. Walters believes B.W. is decompensating and has been punching and hitting his head against the walls in his cell. He has difficulty understanding what is happening and struggles to have coherent conversations.

155. As of the date of this filing, B.W. has been incarcerated for over 65 days without receiving court-ordered restoration services.

iv. Plaintiff J.J.

156. Plaintiff J.J. is a 35-year-old man diagnosed with paranoid schizophrenia. He is currently incarcerated in Cabarrus County Jail and has cycled repeatedly through the ITP system in multiple counties, including Cumberland, Bertie, Nash, and Wake Counties.

157. In May 2010, J.J. began exhibiting severe psychotic symptoms, including hearing voices, seeing visions, speaking in the third person, and becoming frequently confused. He was evaluated at Atrium Behavioral Health and diagnosed with paranoid schizophrenia.

158. Following his diagnosis, J.J. was prescribed antipsychotic medications, initially stabilizing him, but he later experienced periods of noncompliance and drug use.

159. J.J.'s first involvement in ITP proceedings began in July, 2023, when he was arrested in Cumberland County for allegedly possessing a controlled substance and attempting to steal an alternator. On July 24, 2023, his court-appointed attorney moved for a capacity evaluation, and the court ordered it the same day. A local forensic evaluator later found him likely incapable, and on September 22, 2023, the court ordered an evaluation at Central Regional Hospital. On December 4, 2023, after waiting 73 days in Cumberland County jail, J.J. was evaluated and again found incapable. On

January 17, 2024, the court ordered his transfer to Cherry Hospital for restoration, but the transfer never occurred. On January 14, 2025, nearly a year later, the charges were dismissed due to J.J.'s lack of capacity. J.J. never received restoration services.

160. J.J. was transferred to Nash County Detention Facility on January 25, 2025, to face other criminal charges, which were dismissed due to the prior ITP finding. He was released without services and continued to decompensate.

161. After the Nash County charges were dismissed, he was involuntarily committed to Coastal Plains Behavioral Health, based on a petition filed by his mother. He remained there for approximately ten days before being discharged without his family being notified.

162. J.J.'s second involvement in ITP proceedings began in March 2025 in Wake County following a psychotic episode in which he allegedly attempted to steal money from a McDonald's cash register. On March 24, 2025, the court ordered a local forensic evaluation. On April 24, 2025, the evaluator found him incapable. On May 5, 2025, the charges were dismissed, and J.J. was released without receiving any restoration services.

163. J.J.'s third involvement in ITP proceedings began on November 20, 2025, in Bertie County, when he was arrested for allegedly possessing a stolen vehicle while under the delusion that he was a famous musician who needed a

vehicle to go on tour. On December 18, 2025, the court ordered a local forensic evaluation. J.J. was evaluated on January 28, 2026, and the report was submitted on February 10, 2026. On February 16, 2026, J.J. was found incapable. On February 19, 2026, his charges were dismissed, and he was released without ever receiving restorations services.

164. J.J.'s fourth and current involvement in ITP proceedings began just four days after his last cycle ended. On February 23, 2026, J.J. was arrested in Cabarrus County for allegedly stealing a vehicle, possessing tools used in a burglary, larceny, and possession of marijuana. On February 24, 2026, his mother informed his court-appointed attorney that he had recently been found incapable of proceeding. J.J.'s next court date in Cabarrus County is scheduled for May 14, 2026.

165. J.J.'s factual circumstances reflect the fluid and often repetitious experiences of ITP detainees who cycle in and out of jails, courts, and the ITP system due to their mental health disabilities.

b. Non-Plaintiff Individuals with Similar Experiences

i. Adam Anderson

166. Adam Anderson is a 46-year-old man who was diagnosed with schizophrenia and bipolar type schizoaffective disorder. Mr. Anderson also experienced a traumatic brain injury. In February 2021, he was convicted and

placed on supervised probation for larceny of a motor vehicle. On June 7, 2021, he was arrested in Columbus County for a felony probation violation. On August 10, 2021, Mr. Anderson was ordered to receive a capacity evaluation by an LME/MCO evaluator. That evaluation was completed on October 1, 2021. On November 3, 2021, the Court ordered a second capacity evaluation to be completed by Central Regional Hospital. That evaluation was conducted by video on December 15, 2021, and the evaluation report was completed on December 21, 2021. On February 10, 2022, the Court found Mr. Anderson incapable of proceeding to trial and ordered him to be admitted to Cherry State Hospital for IVC examinations and restoration services. Mr. Anderson was not admitted to Cherry until nine months later, on November 15, 2022.

167. From the time of his initial arrest to his admission to Cherry, Mr. Anderson spent 17 months in Columbus County Detention Center, often in acute psychiatric distress, before he received appropriate treatment. Jail staff noted that Mr. Anderson experienced unstable moods, paranoia, and combative behavior and he was eventually shackled due to aggressive behavior. He was frequently placed in solitary confinement because of behaviors resulting from his mental distress. Twelve of the 17 months Mr. Anderson spent detained at Columbus County Detention Center were spent waiting on services to be rendered by Defendants.

ii. Barbara Brown

168. Barbara Brown is a 34-year-old woman who has been diagnosed with bipolar disorder, schizophrenia, and post-traumatic stress disorder. Ms. Brown was first arrested in Caswell County on March 25, 2023, based on a failure to appear warrant issued by Alamance County. During her transfer to Alamance County Detention Center, Ms. Brown became combative, kicked the cage of the transport van, and spat through the gate onto the transport officer. She was later charged with malicious conduct by a prisoner. On August 2, 2023, the Caswell County District Court ordered a capacity evaluation to be completed by Central Regional Hospital. The capacity evaluation report was submitted to the Court over three months later, on November 15, 2023.

169. While in jail, Ms. Brown repeatedly committed acts of self-harm including pulling her hair, slapping herself, punching herself, and giving herself a black eye. She was placed in solitary confinement for six months.

170. On January 22, 2024, the Court determined that Ms. Brown was incapable of proceeding to trial and ordered her to be committed. On January 26, 2024, she was admitted to Central Regional. While she was detained in county jail, Ms. Brown's father advocated vigorously on her behalf. Upon information and belief, this advocacy significantly benefited Ms. Brown by accelerating her admission to Central Regional.

iii. Carl Cline

171. Carl Cline is a 26-year-old man who was born without lower arms and survived cancer as a teenager. Mr. Cline has been diagnosed with bipolar affective disorder, manic with psychotic features, schizophrenia, and schizoaffective disorder. Mr. Cline was arrested in March 2020 for felony stalking. On April 6, 2020, his need for intensive mental health treatment was identified, and he was sent to Central Prison for mental health treatment that Alexander County Detention Center could not provide. He stayed in Central Prison until July 2020. Upon return to Alexander County, Mr. Cline was released to his family. He entered a deferred prosecution agreement and was placed on probation. On January 2, 2022, he was arrested for a probation violation. On January 5, 2022, the Court ordered a capacity evaluation to be completed by Central Regional Hospital. The capacity evaluation was conducted by video on March 24, 2022. The examiner's report was produced on April 11, 2022.

172. On April 28, 2022, the Court found Mr. Cline ITP and ordered his admission to Broughton State Hospital for restoration services. Broughton refused to accept him due to a lack of available beds. Eight months later, Mr. Cline was still in Alexander County Detention Center. On June 1, 2022, Captain Lunsford of Alexander County Detention Center called Broughton to

ask when Mr. Cline would be admitted. Captain Lunsford was informed that Mr. Cline was number 38 on the wait list.

173. On December 16, 2022, Mr. Cline's counsel moved for review of his case. On January 9, 2023, the Court ordered Broughton to admit Mr. Cline within 30 days or appear and show cause. On February 10, 2023, the Court again ordered Broughton to admit Mr. Cline or appear and show cause. Finally, on February 21, 2023, more than 10 months after the order for treatment was entered, Mr. Cline was admitted to Broughton for services. In total, Mr. Cline was in custody for 13 months. Approximately 12 of those months were the result of waiting to be evaluated and admitted for services by Defendants. Mr. Cline experienced acute psychiatric harm due to his unnecessarily prolonged incarceration. Consequently, Mr. Cline was placed in segregation and was repeatedly on suicide watch while in jail.

iv. Devin Davis

174. Devin Davis is a 21-year-old young man diagnosed with schizophrenia and a cognitive disability. On January 2, 2023, he was charged in Iredell County with felony assault on emergency personnel for allegedly punching a hospital staff member while he was in the hospital. On May 12, 2023, the Court ordered a capacity evaluation to be conducted by a local forensic evaluator. On May 26, 2023, Mr. Davis was arrested for Assault on a

Female, after allegedly hitting his mother multiple times in the head while holding car keys. His mother called law enforcement to have him involuntarily committed. On June 8, 2023, the local forensic evaluator found Mr. David incapable to proceed. On August 4, 2023, the Court ordered a second capacity evaluation to be conducted at Central Regional Hospital, which was not conducted until February 21, 2024 — over six months later. On July 19, 2024, the Court found Mr. Davis ITP and ordered him to Broughton Hospital for restoration services. He was not admitted until February 17, 2025 — 213 days (over seven months) later. During his incarceration, Mr. Davis spent approximately 13 months waiting to be evaluated and admitted for court-ordered services.

v. Eliza Evans

175. Eliza Evans is a 34-year-old woman who has been diagnosed with schizophrenia and schizoaffective disorder. On October 13, 2021, she was arrested in Sampson County for possession of methamphetamines and was subsequently charged with assault causing physical injury to a detention officer. On February 24, 2022, the court ordered a capacity evaluation to be conducted by Central Regional. On May 2, 2022, a forensic evaluator submitted a report finding her ITP. On June 26, 2023, the court adjudicated Ms. Evans ITP and ordered her to be involuntarily committed to Cherry State

Hospital. Over 9 months later, on April 1, 2024, Ms. Evans was finally admitted to Cherry. Ms. Evans spent over 11 months in Sampson County Detention Center waiting for evaluation and treatment services that Defendants are statutorily obligated to provide.

vi. Gregory Gordon

176. Gregory Gordon is a 26-year-old man diagnosed with schizophrenia since the age of 15. Over the past three years, he has been hospitalized multiple times, is unable to maintain employment, and struggles with paranoid delusions.

177. On September 21, 2025, Mr. Gordon was arrested for simple assault and resisting a public officer and detained at Wake County Detention Center. On September 30, 2025, upon motion by his public defender, the court ordered that a capacity evaluation be conducted by a local forensic evaluator.

178. After 143 days, on March 2, 2026, Mr. Gordon was found ITP and his charges were dismissed on March 3, 2026.

c. Devonte Watson and other Cleveland County ITP Detainees

179. In March 2024, PBS Frontline aired a documentary titled “Fractured,” about the ITP detainee crisis in North Carolina jails. The documentary featured an interview with Durwin Briscoe, Chief Deputy of the

Cleveland County Sheriff's Office.³⁹ At the time of his interview, Chief Briscoe reported that Cleveland County Detention Center held about six ITP detainees. Chief Briscoe stated that one individual had been waiting for about eight months, while another had been waiting for over a year.⁴⁰

180. Chief Briscoe disclosed that his own nephew, Devonte Watson,⁴¹ was subjected to extended jail detention while waiting for Defendants to provide services. Mr. Watson was 31 years old and was arrested in July 2022 for three pending charges, including assault on a law enforcement officer that allegedly occurred when he was arrested for stealing his mother's car.⁴² Four months later, in November 2022, Mr. Watson was declared ITP. Upon information and belief, Mr. Watson was not admitted to Broughton Hospital for court-ordered services until the last week of March 2024 – approximately 16 months after he was declared ITP. Chief Briscoe commented:

I truly feel that the longer he sits in jail, it changes his mental status and he's going to continue to go downhill. It's difficult for me to see that he's inside the jail not getting the proper care that he needs. And it's no fault of the jail. Jails are not designed to give the proper care for mentally ill inmates.⁴³

³⁹ FRONTLINE, *Fractured* (Mar. 5, 2024), <https://www.pbs.org/wgbh/frontline/documentary/fractured/>.

⁴⁰ *Id.*

⁴¹ Unlike the ITP detainees mentioned above, Devonte Watson has not been provided a pseudonym. His story and name have already been publicized in "Fractured." *See id.*

⁴² *Id.*

⁴³ *Id.*

181. Delays in commitment examination and treatment cause people with severe mental health disabilities to be segregated in jail — the most restrictive environment — rather than in a hospital or community-based setting. In addition, these delays often result in decompensation, mental and physical isolation, and solitary confinement, creating more extensive segregation *within the jail*.

182. Such prolonged detention not only worsens the conditions that render individuals incapable of proceeding, but also results in extended deprivations of necessary treatment, thereby exacerbating existing violations of the Due Process Clause, ADA, and RA.

VII. CLASS ACTION ALLEGATIONS

183. Plaintiffs J.B., D.P., B.W., and J.J., by and through their next friends and/or legal guardians, seek to certify a class of all individuals with serious mental health and other cognitive disabilities charged with crimes who are or will be detained in North Carolina jails to await capacity evaluations or restoration services that the North Carolina Department of Health and Human Services (“NCDHHS”) is statutorily required to provide.

184. Defendants have the ability to identify all current members of the Plaintiff Class.

185. The individual named Plaintiffs are members of the Plaintiff Class because they are or will be either awaiting capacity evaluations or restoration services that Defendants are legally required to provide.

186. The requirements of Federal Rule of Civil Procedure 23(a) are satisfied:

- a. Numerosity. The Plaintiff Class is so numerous that joinder of all its members is impracticable due to the number and the inclusion of people who will be injured in the future. Even without considering future class members, available data indicates there are currently far more than a hundred (100) individuals awaiting evaluation, and more than a hundred (100) individuals assessed to be ITP awaiting restorative treatment. The current members of the Plaintiff Class are ascertainable, as Defendants have the ability to identify all current members of the class, and will have the ability to identify future class members as courts order individuals to undergo ITP evaluations or restoration services. Class members are scattered throughout jails across North Carolina's 100 counties, such that it would be impracticable for all class members to file suit individually and have their cases joined before a single court. Moreover, class members have limited

resources to advocate on their own behalf, because their severe mental and cognitive disabilities interfere with their ability to access the courts, because they are detained in jail, have little to no income, and typically are indigent or have minimal financial resources.

- b. Commonality. Questions of law and fact common to the Plaintiff Class include but are not limited to: (1) the nature and extent of Defendants' statutory duties to provide capacity evaluations and restoration services to the Plaintiff Class; (2) whether Defendants have failed to provide timely access to capacity evaluations and restoration services in violation of the Fourteenth Amendment's substantive due process guarantees as interpreted in *Jackson v. Indiana*; (3) whether Defendants have failed to provide timely access to capacity evaluations and restoration services in violation of the Fourteenth Amendment's procedural due process guarantees; (4) whether Defendants' delays in providing capacity evaluations and restoration services violate the integration mandates of the ADA and the RA; (5) whether Defendants' methods of administering the system of capacity evaluations and restoration services have the purpose or effect of excluding

Plaintiff class members from access to services, or defeat or substantially impair accomplishment of the objectives of the state program to which Plaintiff class members are subjected, as prohibited by the ADA and the RA; and (6) whether Defendants have failed to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability in violation of the ADA and the RA.

- c. Typicality. The claims of the named Plaintiffs are typical of the claims of the Plaintiff Class. The proposed class representatives have experienced lengthy delays in the delivery of ITP evaluations and/or restoration services that equal or exceed the current average wait times for class members. The named Plaintiffs risk substantial harm due to their prolonged detention that is the same or very similar in kind and severity to risks borne by members of the Plaintiff Class. As of this filing, Plaintiff J.B. has been waiting over 19 days for a local capacity evaluation, Plaintiff D.P. has been waiting over 90 days to be transferred to Central Regional Hospital for restoration services, Plaintiff B.W. has been waiting over 50 days to be transferred to Broughton Hospital for restoration

services, and Plaintiff J.J. has previously cycled through the ITP system three times, and following his current arrest, will be subjected to the system's wait times for a fourth time. Plaintiff J.B.'s confusion worsened, resulting in him not utilizing his commissary or understanding what is happening. Plaintiff D.P. remains incarcerated in the close-security unit, akin to solitary confinement, suffering from paranoid delusions that make it difficult for him to be around other people. Plaintiff D.P. is effectively isolated and cut off from social support due to his illness. Plaintiff B.W. is decompensating and has been punching and hitting his head against the walls in his cell. He has difficulty understanding what is happening and struggles to have coherent conversations. Plaintiff J.J.'s delusions, including the belief that he must do whatever is necessary to live his life as a famous musician who needs to go on tour, are likely to worsen while incarcerated without mental health services.

- d. Adequacy. The class representatives and class counsel will fairly and adequately protect the interests of the Plaintiff Class. The class representatives are committed to obtaining declaratory and injunctive relief that will benefit themselves and the Plaintiff

Class by ending Defendants' unlawful policy and practice of delaying court-ordered evaluation and restoration services. They have a strong personal interest in the case and have no conflicts with class members. Plaintiffs J.B., D.P., B.W., and J.J. are represented by committed next friends or legal guardians and experienced counsel who have specialized expertise in litigating issues under the constitution and disability rights statutes on behalf of those incarcerated.

187. The requirements of Rule 23(b)(2) are satisfied. Defendants have refused to act on grounds that apply generally to the class by failing to reduce wait times for evaluations and restoration services, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole. The injunctive relief sought will end the unlawful policy and practice for all class members, allowing them to receive proper evaluations and restoration services.

COUNT 1

**42 U.S.C. § 1983 and the Fourteenth Amendment to the U.S.
Constitution (Substantive Due Process)**

*Against Defendant Sangvai in his official capacity for
declaratory and injunctive relief*

188. Plaintiffs incorporate the allegations in all preceding paragraphs as if stated fully herein.

189. Plaintiffs assert this claim for violation of the Due Process Clause of the Fourteenth Amendment pursuant to 42 U.S.C. § 1983.

190. The Due Process Clause prohibits state officials from “depriv[ing] any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1.

191. ITP detainees “have a liberty interest in receiving restorative treatment” while they are detained, *Oregon Advocacy Center v. Mink*, 322 F.3d 1101, 1121 (9th Cir. 2003), and under longstanding Supreme Court precedent, “due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.” *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Once confinement becomes excessive, the state’s asserted interest in competency restoration prior to trial no longer justifies depriving liberty. *See id.*

192. Prolonged confinement of an ITP detainee, during which the detainee is not receiving capacity evaluations or treatment, does not bear a reasonable relation to any legitimate purpose of such confinement.

193. ITP detainees have a life and liberty interest in personal safety and receiving adequate mental health care while in government custody.

194. While detained, ITP detainees also have a constitutional right to individualized treatment to provide a realistic opportunity for capacity restoration, mitigation of severe mental pain, improvement of their mental condition, and prevention of suicide and other forms of self-harm.

195. No legitimate state interest justifies the confinement of mentally ill individuals in county jails for months on end. The extended non-therapeutic confinement of many ITP detainees is not reasonably related to the purpose of their current confinement — to determine whether they have capacity or to restore their capacity to proceed to trial. Because individuals are not receiving capacity evaluations or restoration services during these prolonged wait times (and often decompensate during prolonged detention), the duration of their confinement is unrelated to the purpose of their confinement.

196. Once an individual is found unable to assist in his or her own defense, the only lawful purpose of confinement is treatment to restore the individual's capacity or otherwise appropriately treat their cognitive disability.

197. County jails in North Carolina currently do not have the ability or resources to provide capacity evaluations and restorative mental health services required by the United States Constitution and North Carolina law.

198. Under state law, NCDHHS bears sole responsibility to administer the statutorily mandated system of capacity evaluations and restoration services for ITP detainees.

199. The prolonged confinement also amounts to further punishment imposed without conviction in instances when an ITP detainee has been, or will be, incarcerated for longer than his or her maximum criminal exposure.

200. Defendant Sangvai has failed and continues to fail in his duty to provide an adequate level of health care for ITP detainees in a constitutionally timely manner.

201. Defendant Sangvai has violated ITP detainees' rights under the Due Process Clause of the Fourteenth Amendment.

202. Unless enjoined from continuing NCDHHS's current unconstitutional policies and practices, Defendant Sangvai will continue to violate the constitutional rights of ITP detainees.

COUNT 2

**42 U.S.C. § 1983 and the Fourteenth Amendment to the U.S.
Constitution (Procedural Due Process)**

*Against Defendant Sangvai in his official capacity for
declaratory and injunctive relief*

203. Plaintiffs incorporate the allegations in all preceding paragraphs as if stated fully herein.

204. Plaintiffs assert this claim for violation of the Due Process Clause of the Fourteenth Amendment pursuant to 42 U.S.C. § 1983.

205. The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits state officials from “depriv[ing] any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1.

206. The Due Process Clause protects ITP detainees from prolonged detention in jails because such detention and lack of timely ITP evaluations and restoration services prejudice their ability to participate in their own defense and to access procedures for expediently resolving their criminal cases.

207. ITP detainees have a liberty interest in freedom from incarceration absent criminal conviction. *Oregon Advocacy Center v. Mink*, 322 F.3d 1101, 1121 (9th Cir. 2003).

208. Procedural due process protects more than notice and a hearing; it ensures a meaningful opportunity to participate in the process affecting one's liberty. *See, e.g., Hamdi v. Rumsfeld*, 542 U.S. 507, 529–33 (2004).

209. ITP detainees have liberty interests in evaluations and treatment that could enable them to meaningfully confer with counsel, negotiate plea deals, or present a defense. With extreme delays, prejudice to the ability to present a defense is inevitable: witnesses or evidence disappear, memories erode, and prompt plea bargaining or diversion programming cannot take place. These delays extend incarceration without trial and deny meaningful access to the legal process—the practical, effective ability to use the legal system to protect one's rights or challenge one's detention.

210. Defendant Sangvai, by the inadequate administration and operation of the ITP system, has failed to remove obstacles to ITP detainees' full participation in judicial proceedings.

211. Defendant Sangvai, by the inadequate administration and operation of the ITP system, has violated these detainees' rights to procedural due process under the Fourteenth Amendment to the U.S. Constitution.

212. Unless enjoined from continuing NCDHHS's current unconstitutional policies and practices, Defendant Sangvai will continue to violate the constitutional rights of ITP detainees.

COUNT 3

Discrimination in Violation of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

Against Defendant North Carolina Department of Health and Human Services and Defendant Sangvai, in his official capacity, for declaratory and injunctive relief

213. Plaintiffs incorporate the allegations in all preceding paragraphs as if stated fully herein.

214. Title II of the ADA requires, *inter alia*, that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. “Discrimination” means *any* of the following:

- a. failing to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d);
- b. employing “criteria or methods of administration” . . . “[t]hat have the effect of subjecting qualified individuals with disabilities to discrimination” or “[t]hat have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity’s program with respect to individuals with disabilities.” 28 C.F.R. § 35.130(b)(3)(i)–(ii); and
- c. failing to “make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.” 28 C.F.R. § 35.130(b)(7).

215. NCDHHS and Defendant Sangvai, in his official capacity, are “public entities” as used in Title II of the ADA. *See* 42 U.S.C. § 12131(1)(B). Defendant Sangvai is charged with oversight and operation of NCDHHS. *See* N.C. Gen. Stat. §§ 143B-138.1(b)(6), 143B-147.

216. ITP detainees qualify as individuals with disabilities as defined under 42 U.S.C. § 12131 because they have, or are regarded as having, mental health disabilities severe enough that their capacity to stand trial has been called into question, or they have already been deemed incapable to proceed to trial. *See* 42 U.S.C. § 12102.

Failure to Administer Services in the Least Restrictive Setting

217. Defendants have acknowledged that capacity restoration can be accomplished in community settings, and that some individuals who are hospitalized for restoration do not need hospitalization to receive those services.

218. Defendants have further acknowledged that the current ITP system does not adequately provide for forensic evaluation and restoration outside of state psychiatric hospital settings.

219. Defendants have failed to administer their ITP-related services in the most integrated setting appropriate to the needs of ITP detainees. Defendants’ failure to provide for timely evaluations deprive ITP detainees of

the possibility of being determined eligible for community-based support and/or restoration programs. This occurs: (1) directly, because of the extended time periods of confinement during which those evaluations are not being conducted; and (2) by allowing the ITP individual to experience worsening mental health through confinement and isolation, thus decreasing the potential for access to community-based services. By depriving ITP individuals of the chance for community-based services through delay in providing evaluation and restoration services, Defendants interfere with ITP individuals' right to receive services in the most integrated setting.

220. Extended confinement of ITP individuals due to the lack of timely capacity evaluation and restoration constitutes unlawful discrimination under the integration mandate of Title II of the ADA. *See Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 600 (1999) (finding that unnecessary segregation of individuals with mental health disabilities constitutes discrimination). Both in-patient treatment at a facility and community-based treatment are less restrictive alternatives to jail. Delays in providing restoration services is the factual and legal equivalent of denying ITP individuals access to services in the least restrictive environment.

221. The parties' respective experts agree that ITP detainees should be receiving services in less restrictive settings than county jails.

Methods of Administration

222. Defendants have utilized methods of administering ITP services that result in discrimination against ITP detainees. Defendants' methods of administration defeat or substantially impair benefits of the capacity evaluation and restoration programs controlled by NCDHHS.

223. Defendants have failed to enforce their contracts with LME/MCOs which require that the LME/MCOs provide for timely access to local ITP evaluations, resulting in increased wait times. Defendants' failure to ensure quality local evaluations has caused additional delays when re-evaluations are needed due to deficiencies in the initial evaluations. Defendants' failure to ensure that LME/MCOs provide for community-based restoration options has impaired the ability of courts to order restoration services in community-based settings.

224. Defendants have failed to enforce requirements that their LME/MCOs ensure adequate community-based services for individuals who are ready for discharge from state psychiatric facilities, resulting in lack of available beds for evaluation and restoration services, and therefore additional wait times for ITP individuals.

225. Defendants' administration of the ITP program has resulted in prolonged wait times and worsened mental health conditions among ITP

individuals that defeat or substantially impair benefits of the capacity evaluation and restoration programs controlled by NCDHHS.

Failure to Make Reasonable Modifications

226. Defendants have failed to make reasonable modifications in policies, practices, or procedures which are necessary to avoid discrimination against ITP detainees.

227. Defendants control, directly or through contracts, the local evaluation process (including the availability of assessors), the availability of psychiatric beds (including delays in discharge of those ready for discharge), and the provision of ITP restoration services in community or facility-based settings. Defendants have failed to make reasonable modifications to policies, practices, or procedures sufficient to provide timely ITP evaluation and restoration services, including but not limited to the failure to establish and enforce compliance by local assessors and LME/MCOs with timeliness requirements.

228. Unless enjoined from continuing current unlawful policies and practices, Defendants will continue to violate the ADA rights of ITP detainees.

COUNT 4

Discrimination in Violation of the Rehabilitation Act, 29 U.S.C. § 794

Against Defendant North Carolina Department of Health and Human Services and Defendant Sangvai, in his official capacity, for declaratory and injunctive relief

229. Plaintiffs incorporate the allegations in all preceding paragraphs as if stated fully herein.

230. Plaintiffs bring this claim under the RA on behalf of North Carolinians with mental health disabilities and other cognitive disabilities. These individuals are subject to the protections of Section 504 of the RA and are otherwise entitled to nondiscriminatory services from Defendants. *See* 29 U.S.C. § 794(a); 45 C.F.R. § 84.3.

231. The RA prohibits discrimination based on disability by entities receiving federal financial assistance. 29 U.S.C. § 794(a).

232. Defendant NCDHHS and Defendant Sangvai, in his official capacity, are recipients of federal financial assistance as defined in 45 C.F.R. § 84.2.

233. Section 504 of the RA states: “No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial

assistance” 29 U.S.C. § 794(a). Prohibited acts of discrimination include *any* of the following:

- a. failing to “administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.” 28 C.F.R. § 41.51(d); and
- b. employing “criteria or methods of administration” that “have the effect of subjecting qualified individuals with disabilities to discrimination,” or “that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity’s program with respect to individuals with disabilities[.]” 28 C.F.R. § 41.51(b)(3)(i)–(ii).

234. ITP detainees qualify as individuals with disabilities as defined under Section 504 because they have or are regarded as having mental health disabilities severe enough that their capacity to stand trial has been called into question, or they already have been deemed incapable to proceed to trial. 28 C.F.R. § 41.31(a).

235. For the same reasons detailed above in Count 3, Defendants have failed to administer their ITP-related services in the most integrated setting appropriate to the needs of ITP detainees.

236. Extended confinement of ITP individuals due to the lack of timely capacity evaluation and restoration constitutes unlawful discrimination under the integration mandate of the RA. 28 C.F.R. § 41.51(d).

237. As detailed above in Count 3, Defendants have utilized methods of administering its ITP services that result in discrimination against ITP detainees. Defendants' methods of administration defeat or substantially impair the benefits of the capacity evaluation and restoration programs controlled by NCDHHS.

238. As detailed above in Count 3, Defendants have failed to make reasonable modifications to their policies, practices, or procedures necessary to avoid discrimination against ITP detainees.

239. Unless enjoined from continuing current unlawful policies and practices, Defendants will continue to violate the RA rights of ITP detainees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of the proposed class, request that this court grant the following relief:

a. Issue a judgment declaring that the policies, practices, and conduct of Defendants, as described in this Amended Complaint, constitute violations of the rights of North Carolinians who are believed or found to be mentally incapable to participate in their own defense under the Fourteenth Amendment to the United States Constitution, Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act;

b. Issue preliminary and permanent injunctions enjoining Defendants from failing to provide timely access to capacity evaluation, restoration services, and involuntary commitment examinations;

c. Order Defendants to develop an effective and working remedial plan to reduce wait times for capacity evaluations, capacity restoration treatment, and involuntary commitment examinations to within constitutional limits;

d. Certify this case as a class action lawsuit, appoint Plaintiff J.B., by and through his next friend and mother Linda Windley, Plaintiff D.P., by and through his next friend and mother Ms. Stacey Blevins, Plaintiff B.W., by and through his next friend and mother Ms. Jeanna Walters, and Plaintiff J.J., by and through his legal guardian and mother Denise Vick, as Class Representatives, and appoint Plaintiffs' attorneys as Class Counsel;

e. Award Plaintiffs reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988(b), 42 U.S.C. § 12205 and 29 U.S.C. § 794a(b); and 28 U.S.C. § 1920; and

f. Allow such other and further relief as the Court deems just and proper.

Respectfully submitted this the 16th day of March 2026.

/s/ Michele Delgado

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