

DOCCA

FREQUENTLY ASKED QUESTIONS

What is the class-action lawsuit?

In 2007, a number of Colorado criminal defense attorneys with experience representing sex offenders in Colorado state courts, began meeting regularly under the auspices of the Colorado Criminal Defense Bar. The group shared their experiences and frustrations regarding the treatment of sex offenders under the Lifetime Supervision Act (the Act). C.R.S. § 18-1.3-1001, et. seq. In particular, the lawyers noted that they were receiving complaints and evidence that sex offenders who had been sentenced under the Act, were not being provided treatment or release on parole. This failure was contrary to the Act which was passed on the express promise that sex offenders sentenced to a life sentence would have the option to enter treatment and be released on parole or decline treatment and remain in prison for the rest of their natural life. Further investigation revealed that the treatment programs within the Department of Corrections (DOC) were under-funded, under-staffed and hobbled by dysfunctional policies. In short, DOC was violating the law by denying inmates treatment required by the Act, and as a consequence hundreds of inmates were doomed to die in prison. That number of inmates has now grown to nearly 1,500, and continues to increase each month. To correct this injustice, the attorneys drafted a federal class-action lawsuit to be filed in the United States District Court in Denver, Colorado. The lawsuit seeks injunctive relief and requests that the Court order DOC to comply with the law and provide inmates with the statutorily required treatment and release on parole under treatment. The lawsuit will proceed under section 1983 of the United States Code.

Who will be covered by the class-action lawsuit?

The lawsuit is intended to cover all DOC inmates serving lifetime sentences for sex offense convictions covered by the Act. Generally, this covers inmates who were convicted of class 2, 3, and 4 felonies for sex offenses committed on or after November 1, 1998. At present, there are approximately 1,500 inmates serving such sentences, but that number is constantly growing.

Will they win the lawsuit?

There is no guarantee that the lawsuit will be won. In fact, it would be unethical for counsel to promise victory. However, they are able to state that they have agreed to take the case because they deeply believe it has great merit and should be won.

What will happen if the lawsuit is won by the inmates?

The lawsuit is seeking injunctive relief, not money. This means the Plaintiffs will be asking the Court to order DOC to do something. In this case, counsel currently intends to ask the Court to order DOC to provide the treatment required by law. Specifically, the Court will be asked to order DOC to adequately fund and staff treatment so as to provide a realistic opportunity to receive treatment and be released. Further, the existing treatment regimen based on unobtainable subjective thresholds of success, must be replaced with objective standards of progress. This is the standard used throughout

the rest of the judicial system, and given the moderate to low recidivism rates of sex offenders, the same standards should apply.

Can a win or loss be appealed?

Whether the lawsuit is won or lost, it may be appealed. On appeal a case may be upheld or reversed. If reversed it may be remanded for trial. A party may also choose to appeal further to the United States Supreme Court. The Supreme Court only selects a small number of cases to review.

Who are the attorneys?

The attorneys handling the lawsuit are primarily criminal defense attorneys. At present, lead counsel include Ingrid DeFranco, Alison Ruttenberg and John Pineau. Both the University of Colorado Law School and the University of Denver College of Law have also provided a number of volunteer law students to assist in the litigation. Further, the Colorado Criminal Defense Bar has provided invaluable support to the effort.

How are the attorneys being paid?

The attorneys and law students involved are very devoted to this action and are handling the lawsuit without pay. However, if they win the lawsuit they will seek reimbursement by requesting an award of attorneys fees. There is no guarantee attorneys fees will be awarded or that such an award will amount to the full measure of the professional time contributed to the lawsuit.

How are the litigation costs being paid?

There are a variety of costs associated with a lawsuit, including filing fees, paper costs, expert witnesses, depositions, transcripts, investigators, etc. None of these costs go to the attorneys, but are necessary to pay to outside providers in order to prosecute and win a lawsuit. A class-action lawsuit in federal court filed on behalf of nearly 1,500 plaintiffs will require substantial costs. The costs for the lawsuit have been, and are being, collected through donations and deposited in the trust account set up in compliance with the Colorado Supreme Court's Rules of Professional Conduct. Early donations have been brisk and growing. It is the intent of the Advocates for Change (AFC) (Fund Raising Committee) to collect a total of \$40,000 in the next six months, before the lawsuit is filed. As the lawsuit progresses, the collection of donations will continue as donations are needed to meet ongoing costs. AFC (Fund Raising Committee) and counsel are planning to provide transparency to donors so that they may periodically review the balance and an accounting of expenditures.

What does the inmate have to do to be covered by the lawsuit?

If an inmate was sentenced to a life sentence under the Act, they are targeted to be covered by the lawsuit. If they fall within this class, they do not need to do anything more to be included in the class-action. If they do not fall within this class, there is nothing they can do to be included in the class-action.

May an inmate exclude themselves from the lawsuit?

In the course of a class-action lawsuit, members of the class (the covered inmates), will receive written notices that will advise them of their right to opt out of the lawsuit.

Can the case be settled?

Yes, it may be settled. There is no way of knowing if settlement is possible. Settlement always depends on whether both sides are willing and able to settle.

What will happen if the lawsuit is lost by the inmates?

Losing is not acceptable, but always a possible outcome. Counsel are willing to go forward on this lawsuit despite the risk of losing because they are not able to sit quietly while hundreds of men and women, who were sentenced on the promise that they could be released through treatment, are left to languish and die in DOC.

How long will the lawsuit take?

Counsel for the inmates will strive to achieve a victory as soon as possible, but the judicial system is slow, very slow. Civil cases take much longer than criminal cases. Victory is likely to take a number of years to achieve. Moreover, any outcome at the civil trial level will be subject to appeal, and possibly further appeal or retrial. In short, the process takes a long time and counsel would not be surprised if it takes between two and ten years to resolve the case.

What if there is money left over in the costs trust account?

If the case is completely resolved, funds left in the trust account will be donated to AFC.

Where may I go to get answers to other questions?

Please contact AFC by email at advocates4changeafc@yahoo.com, by mail to Advocates for Change, P. O. Box 351023, Westminster, CO 80035-1032 or by telephone at 720-690-7125.

Is there anything I can do to help?

Yes, absolutely. You may work with and/or join AFC by going to their website at www.advocates4change.org or writing to AFC at P. O. Box 351032, Westminster, CO 80035-1032 and you may donate to the litigation trust fund. To volunteer, please contact us. To donate, please send checks made out to DOCCA Trust Fund to AFC, P. O. 351032, Westminster, CO 80035-1032. We will forward the funds to counsel to be recorded and deposited in the trust fund.