

NOTICE OF PENDING CLASS ACTION

Caballero v. New York State Department of Corrections and Community Supervision,
9:20-CV-1470 (N.D.N.Y.)

You may be part of a lawsuit seeking money to compensate people incarcerated by the New York State Department of Corrections and Community Supervision (“DOCCS”) who were denied access to the Shock Incarceration Program (“Shock”), an early-release program for nonviolent offenders that includes substance abuse treatment, on the basis of their mental health status.

What is a class action?

- In a class action, one or more people sue on behalf of others who have similar claims. After the Court certifies the class—meaning that it approves the case for class treatment—the Court resolves issues for all class members except for those who choose to exclude themselves, which is also called “opting out” of the class and the class action.

Am I a member of the class?

- If you are receiving this notice by mail, you have been identified as a potential member of the class by records maintained by DOCCS.
- You qualify as a class member if you were:
 - incarcerated in DOCCS custody;
 - eligible by law to participate in Shock, including that you were under age 50, were not sentenced for a violent felony, and were within three years of your expected conditional release or parole eligibility;
 - designated Office of Mental Health (“OMH”) Level 3, which generally means that you needed limited psychiatric treatment and/or medication for a moderate mental disorder (such as depression, anxiety, or post-traumatic stress disorder) but that you didn’t require daily, intensive psychiatric treatment for a major mental disorder (such as severe paranoid schizophrenia or bipolar disorder);
 - excluded from Shock on the basis of your mental health level at any time between December 2, 2017, and November 3, 2021;
 - not judicially ordered to be enrolled in Shock by your sentencing court; and
 - not offered an alternative six-month pathway to early release from prison.

What is this case about?

- This class action was filed on December 2, 2020 by Jonas Caballero. It claims that DOCCS violated Title II of the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act by excluding incarcerated individuals from Shock on the basis of their mental health status. The lawsuit alleges that, by excluding people with certain mental health conditions from Shock, DOCCS unlawfully discriminated against those people and denied them certain benefits, including the opportunity to be released early from prison by completing the Shock program.

What has happened in the case so far?

- Class Certification: In May 2023, the Court certified this case as a class action consisting of: “all persons who (1) were incarcerated in DOCCS custody; (2) were excluded from Shock on the basis that they were designated OMH Level 3 at any time between December 2, 2017, and November 3, 2021; (3) were not judicially ordered to be enrolled in Shock by their sentencing court; (4) were statutorily eligible to enroll in Shock; and (5) were not offered an alternative six-month pathway to early release from prison.” The Court designated the law firm Kaufman Lieb Lebowitz & Frick LLP as class counsel. *Caballero v. DOCCS*, No. 9:20-CV-01470 (N.D.N.Y. Oct. 3, 2024), ECF No. 74. The class was certified for liability purposes only. This means that the only issue the Court will decide for all class members is whether DOCCS violated their rights by discriminating against them. With a liability-only class, the Court does not decide what, if any, damages (i.e., money) class members could or should be awarded for any violations of their rights.
- Motion for Partial Summary Judgment: In October 2024, the Court granted Plaintiff’s motion for partial summary judgment and denied Defendant’s motion for partial summary judgment, and in doing so determined that DOCCS was liable to class members under the ADA and the Rehabilitation Act for discriminating against them on the basis of their actual or perceived disabilities. *Caballero v. DOCCS*, No. 9:20-CV-01470 (N.D.N.Y. Oct. 3, 2024), ECF No. 101. In other words, the Court has determined that DOCCS violated the rights of class members under federal antidiscrimination law by excluding them from Shock. However, this determination is not final yet.

What are my legal rights as a class member?

- If you are a member of the class, you have the right to opt-out, or request exclusion from and not participate in this case. If you opt out, you will not be bound by the Court’s final determination of whether DOCCS violated your rights under the federal antidiscrimination laws by excluding you from Shock. If you want to opt out such that you are not bound by Court’s final determination of whether DOCCS violated your rights, you must mail a letter by first class mail setting forth your name, present address, and a statement that you wish to be excluded from the class to the address specified below. Your letter must be postmarked on or before **September 30, 2025**:

Shock Class Action
c/o Atticus Administration
PO Box 64053
Saint Paul, MN 55164

- If you do not request exclusion or if your letter of exclusion is not postmarked on or before **September 30, 2025**, you will be included in the class and you will continue to be represented by class counsel, Kaufman Lieb Lebowitz & Frick LLP. You will be bound by the Court’s final determination of whether DOCCS violated your rights by excluding you from Shock and you will not need to hire your own lawyer or take any other action in order to receive such a determination. You will be legally bound by all of the orders the Court issues and judgments the Court makes in this class action.

- You also have the right to retain your own attorney and enter an appearance in this action through that attorney.

What are the next steps in the case, and what do they mean for me?

- Because this is currently a liability-only class, the Court will not decide what damages (if any) you or any other class member may be entitled to as a result of any violation of your rights by DOCCS.
- There is also a disagreement between the parties as to whether: (1) the law permits damages for extra time you spent in custody as a result of any violation of your rights by DOCCS, or (2) the law limits damages to compensation for economic losses you suffered as a result of any violation of your rights by DOCCS. The Court has not resolved this disagreement yet. The future resolution of this disagreement may have a significant impact on the amount of money (if any) you could recover for any violation of your rights.
- If you want to pursue damages for any violation of your rights, you always have the right to file your own lawsuit at any time, whether on your own or through an attorney of your choice. You do not need to opt out of the class to do so.
- However, if you are a member of the class and you want to pursue damages for any violation of your rights, you do not *need* to file a lawsuit now. Because class members' claims are pending in this case, the statute of limitations (or deadline to file an action) is not running on class members' claims.
- Class counsel at Kaufman Lieb Lebowitz & Frick LLP are lawyers for all class members for purposes of this case and are available to discuss class members' options with them on a privileged and confidential basis. That does not mean, however, that class counsel can or will pursue individual lawsuits for damages on behalf of individual class members, either now or in the future. Class counsel's role in this case does not obligate them to pursue any other cases.
- The possibility remains that the parties could agree in the future to a settlement that would entitle class members to money. If that happens, you will receive notice of the settlement, including how to opt out if you do not wish to participate in the settlement and how to claim your share of the settlement if you wish to do so.

Am I entitled to money right now?

- No. No money or benefits are available now, and there is no guarantee that money or benefits ever will be obtained. If money or benefits are ever obtained for class members, you will be notified about how to receive a share. If the time comes when you would need to take action on your own to recover money for any violation of your rights found by the Court, you will also be notified. At that time, there may be more clarity about the kinds of damages class members can and cannot pursue under the law for any violation of their rights by DOCCS.

More Information

- If you have any questions or want to review documents related to this case, you may visit www.ShockClassAction.com.
- Any inquiry you may wish to make concerning this notice should be addressed to:

Kaufman Lieb Lebowitz & Frick LLP
Shock Class Action
18 East 48th Street, Suite 802
New York, NY 10017
Phone: 646-921-6210

- Please do not contact the Court. The Court cannot answer any questions or discuss the case.