



CASE NO: A-22-856144-C
Department 13

COMP

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**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

DAWNYELL FLYNN, an individual,

Plaintiff,

vs.

Case No.:

Department:

STATE OF NEVADA ex rel. NEVADA
DEPARTMENT OF CORRECTIONS, a public
entity of the State of Nevada;¹ DONALD BURSE,
an individual; CHARLES DANIELS, director, in
his official capacity; and Doe Nevada Department
of Corrections Employees 1 – 10, in their individual
and official capacity.

**COMPLAINT
(JURY TRIAL DEMANDED)**

**ARBITRATION EXEMPTION
CLAIMED: EQUITABLE AND
DECLARATORY RELIEF
REQUESTED**

Defendant(s).

¹ NRS 12.105 State and local governmental agencies may be sued without naming members of their governing bodies; service. Any political subdivision, public corporation, special district, or other agency of state or local government which is capable of being sued in its own name may be sued by naming it as the party without naming the individual members of its governing body in their representative capacity. In addition to any other method which may be provided by statute or rule of court, service may be made upon the clerk or secretary of the political subdivision, corporation or agency.

1 **COMPLAINT**

2 COMES NOW Plaintiff, DAWNYELL FLYNN, by and through counsel Sadmira Ramic,
3 Esq., Christopher M. Peterson, Esq., and Sophia A. Romero, Esq., of the American Civil Liberties
4 Union of Nevada, and for her Complaint, alleges as follows:

5 **I. INTRODUCTION**

6 The Nevada Department of Corrections and Florence McClure Women’s Correctional
7 Center, due to a failure to implement preemptive policies, allowed for the sexual assault of prison
8 inmates by prison staff. The Nevada Department of Corrections and Florence McClure Women’s
9 Correctional Center prison officials were aware of a substantial risk of sexual assaults and created
10 an environment within the prison, which provided the opportunity for Donald Burse to commit the
11 sexual assaults. Their actions violated Ms. Flynn’s rights under the Eighth Amendment of the
12 United States Constitution pursuant to 42 U.S.C. § 1983 as well as resulting in the infliction of
13 emotional distress, battery, and unlawful imprisonment as defined under Nevada law. Plaintiff is
14 seeking damages and injunctive and declaratory relief.
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16 **II. PARTIES**

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18 1. Plaintiff, DAWNYELL FLYNN, is, and was at all times relevant herein, a resident
19 of the State of Nevada, County of Clark, who was and continues to be incarcerated at the Florence
20 McClure Women’s Correctional Center.

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22 2. Defendant, THE STATE OF NEVADA, DEPARTMENT OF CORRECTIONS, is
23 the governmental agency in the State of Nevada tasked with overseeing and operating all prisons
24 located in the state, including Florence McClure Women’s Correctional Center.

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26 3. Defendant, DONALD BURSE, is, and was at all times relevant herein, a resident
27 of the State of Nevada, County of Clark, and was, at the time relevant to this complaint, employed

1 by the Nevada Department of Corrections as an institutional chaplain for Florence McClure
2 Women's Correctional Center.

3 4. Defendant, CHARLES DANIELS, is, and was at all times relevant herein, a
4 resident of the State of Nevada, and is employed as the Director of the Nevada Department of
5 Corrections.

6 5. Defendants DOES 1 – 10, are unknown employees, staff, contractors, or agents of
7 the Nevada Department of Corrections, along with those acting in concert with them, who were:
8 1) responsible for hiring, supervising, and monitoring Donald Burse; 2) tasked with developing
9 and implementing NDOC's policies and procedures on prevention, response, and elimination of
10 sexual assaults within prisons; and 3) aware of the risk of sexual assaults within FMWCC and
11 deliberately chose to ignore it.
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13 6. At all relevant times herein, all Defendants acted under color of state law, and all
14 individual Defendants were acting within the scope of their employment.
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16 **III. JURISDICTION AND VENUE**

17 7. The transactions and occurrences that give rise to Plaintiff's claims against
18 Defendants occurred in the City of Las Vegas, Clark County, Nevada.

19 8. Defendants operate and/or reside in Clark County, Nevada and are an agency of or
20 employed by the State of Nevada.

21 9. This Court has original subject matter jurisdiction over this matter pursuant to
22 Article 6, Section 6, of the Constitution of the State of Nevada and NRS 30.030 (Uniform
23 Declaratory Judgments Act).
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25 10. Venue is proper in this Court pursuant to NRS 13.020 and 13.040 because the cause,
26 or some part thereof, arose in the City of Las Vegas, Clark County, Nevada.
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IV. EXHAUSTION

11. Plaintiff, DAWNYELL FLYNN, has exhausted all administrative remedies available to her as required under 42 U.S.C. § 1997e(a) of the Prison Litigation Reform Act (PLRA).

V. STATEMENT OF FACTS

A. As to Defendant Donald Burse

12. Defendant, Donald Burse (“Mr. Burse”), was employed by the Nevada Department of Corrections (“NDOC”) is an institutional chaplain for Florence McClure Women’s Correctional Center (“FMWCC”).

13. At the same time, Plaintiff, Dawnyell Flynn (“Ms. Flynn”) was, and is currently, serving a sentence at FMWCC.

14. Around June or July of 2020, Mr. Burse began to frequent the dorm where Ms. Flynn was housed.

15. What began as causal conversation with Mr. Burse regarding Ms. Flynn’s religion, quickly turned to inappropriate comments about Ms. Flynn’s body and sexual acts that he would like to perform on Ms. Flynn.

16. Sometime around August of 2020, Mr. Burse called for Ms. Flynn to come to his office, located inside the chapel of the prison.

17. Ms. Flynn went to his office under the belief that Mr. Burse would give her a bible.

18. When Ms. Flynn arrived, Mr. Burse was the only one in the chapel.

19. Upon information and belief, the chapel and Mr. Burse’s office are not surveilled in any form.

20. Mr. Burse began the conversation by asking Ms. Flynn if she was wearing a wire.

1 21. When Ms. Flynn confirmed that she was not, Mr. Burse began to discuss his
2 abilities to obtain certain items for Ms. Flynn if she would perform sexual acts on him and allow
3 him to perform sexual acts on her.

4 22. Mr. Burse then rose from his chair, walked over to Ms. Flynn, and made her unzip
5 her pants.

6 23. Mr. Burse sexually assaulted Ms. Flynn by placing his hand inside her pants and
7 touching her vagina.
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9 24. Shortly after this sexual assault, Mr. Burse again called for Ms. Flynn to come to
10 his office.

11 25. Ms. Flynn was under the belief that Mr. Burse had the items he had promised her.

12 26. By the time Ms. Flynn reached the chapel, Mr. Burse was waiting for her outside
13 the door of the chapel.

14 27. Mr. Burse escorted Ms. Flynn into his office and locked the door behind him.

15 28. Mr. Burse commanded Ms. Flynn to undress and sit on his desk.

16 29. Mr. Burse then performed sexual acts on Ms. Flynn.
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18 30. Fearful, uncomfortable, and wanting to put an end to her sexual assault, Ms. Flynn
19 told Mr. Burse that she heard someone coming.

20 31. When Mr. Burse stopped to check the door, Ms. Flynn quickly put her clothes on
21 and tried to leave the room.

22 32. However, Mr. Burse grabbed Ms. Flynn from behind and continued the assault by
23 placing his hand inside her shirt and touching her breast while using the other hand to touch her
24 vagina.
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1 33. While holding Ms. Flynn from behind, Mr. Burse rubbed his genitals on her
2 buttocks.

3 34. Ms. Flynn was eventually able to pull away from Mr. Burse.

4 35. Before Ms. Flynn was able to exit the office, Mr. Burse threatened her and warned
5 her not to tell anyone about what occurred.

6 36. Ms. Flynn filed a grievance on August 10, 2021, with the prison describing these
7 two incidents.

8 37. In January of 2022, the prison informed Ms. Flynn that an investigation had been
9 completed and that her grievance was sustained.

10 38. Mr. Burse was terminated from his position as a chaplain.

11 39. As of May 19, 2022, the Nevada Attorney General's Office has filed three felony
12 counts against Burse: two felony counts of Sexual Abuse of Prisoner by an Employee and one
13 felony count of Unauthorized Custodial Conduct by Employee.

14 40. The criminal case is currently ongoing under case number 22-CR-022659 in the
15 Las Vegas Justice Court.

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18 **B. As to all other Defendants**

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20 41. Upon information and belief, at all relevant times herein, officers, and other NDOC
21 personnel, knew that the chapel is an isolated area and a common place where sexual violence may
22 occur.

23 42. Upon information and belief, at all relevant times herein, despite this knowledge,
24 NDOC and its staff took no steps to minimize the risk to Ms. Flynn, and other inmates, of sexual
25 assault.

26 43. NDOC and its staff permitted male employees to be left alone with female inmates.
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B. SECOND CAUSE OF ACTION
42 U.S.C. § 1983- Deliberate Indifference in Violation of the 8th Amendment
(Against Charles Daniels and Does 1 - 10)

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53. Defendants had a legal obligation to protect Ms. Flynn from being sexually assaulted.

54. Defendants actions and omissions created a substantial risk of serious injury to Ms. Flynn.

55. Defendants were aware of the risk of serious injury to Ms. Flynn and deliberately chose to ignore it.

56. Defendants acted with deliberate indifference to a substantial risk of harm to Ms. Flynn in violation of the Eighth Amendment of the United States Constitution.

C. THIRD CAUSE OF ACTION
Battery
(Against Donald Burse and NDOC)

57. Mr. Burse, acting within the scope of his employment, subjected Ms. Flynn to harmful or offensive touching when he: 1) touched Ms. Flynn's vagina over her pants; 2) put his hand inside her pants; 3) performed oral sex on her; and 4) put his hands inside her shirt and touched her breasts.

58. Mr. Burse intentionally and unlawfully caused Ms. Flynn to fear offensive and harmful contact.

59. Mr. Burse intentionally and unlawfully caused such offensive and harmful contact to occur.

60. Ms. Flynn did not consent to being touched in such a manner.

61. As a direct and proximate result of Mr. Burse's actions, Ms. Flynn suffered injury and damages.

1 62. NDOC, as Donald Burse's employer, is vicariously liable for his tortious conduct.

2 **D. FOURTH CAUSE OF ACTION**
3 **False Imprisonment**
4 **(Against Donald Burse and NDOC)**

5 63. Mr. Burse acted, within the scope of his employment, with the intention to
6 unlawfully confine Ms. Flynn, without her consent, and within boundaries fixed by him including,
7 to wit:

- 8 a. Mr. Burse lured Ms. Flynn to his office;
- 9 b. Mr. Burse closed and locked the door;
- 10 c. No one else was present in the office with them; and
- 11 d. When Ms. Flynn tried to leave, Mr. Burse used physical force to prevent her
12 from doing so and further assaulted her.

13 64. Ms. Flynn was conscious of the confinement at the time that it occurred.

14 65. As a direct and proximate result of Mr. Burse's actions, Ms. Flynn suffered injury
15 and damages.

16 66. NDOC, as Donald Burse's employer, is vicariously liable for his tortious conduct.

17 **E. FIFTH CAUSE OF ACTION**
18 **Intentional Infliction of Emotional Distress**
19 **(Against Donald Burse and NDOC)**

20 67. Mr. Burse engaged in extreme and outrageous conduct, within the scope of his
21 employment, that exceeds all possible bounds of decency and is regarded as utterly intolerable in
22 a civilized community.

23 68. Mr. Burse acted intentionally or recklessly in causing Ms. Flynn extreme emotional
24 distress.

25 69. Mr. Burse's actions resulted in Ms. Flynn suffering extreme emotional distress.

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1 unlawful policies, practices, and acts that create a substantial risk of harm, including sexual
2 assaults, to Ms. Flynn and other inmates.

3 77. Plaintiff seeks injunctive relief, requiring NDOC to develop and implement
4 policies, procedures, and practices to ensure that inmates are protected from harm due to sexual
5 abuse and sexual harassment including: 1) prohibiting inmates to be left alone, in an unmonitored
6 area, with staff of the opposite gender; 2) ensuring substantial video coverage of all of the primary
7 areas, such as chapels, frequented by inmates; 3) ensuring substantial video coverage of all areas
8 NDOC considers to be common places for sexual violence to occur; 4) prohibiting staff members
9 accused of sexual assault or sexual harassment from having contact with inmates at least until the
10 matter is fully investigated and prosecuted or dismissed; and 5) ensuring that all staff have the
11 adequate knowledge, skill, and ability to prevent, detect, and respond to sexual abuse, sexual
12 harassment, and grooming by staff members of individuals in custody.
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14 **G. DECLARATORY RELIEF**

15 78. Under the Nevada Uniform Declaratory Judgments Act, NRS 30.010 to 30.160, this
16 Court has the power to declare the rights, status and other legal relations of the parties whether or
17 not further relief is or could be claimed, and a declaration may be either affirmative or negative in
18 form and effect, and such declarations have the force and effect of a final judgment or decree.²
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20 79. Such declarations have the force and effect of a final judgment or decree.³

21 80. This matter satisfies the four elements that must be met for declaratory relief to be
22 granted, as described below.⁴
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24 81. The facts stated above herein reveal a justiciable controversy in which a claim of
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26 ² See NRS 30.030.

27 ³ NRS 30.030.

⁴ *Kress v. Corey*, 65 Nev. 1, 25–26, 189 P.2d 352, 364 (1948).

1 right is asserted against one who has an interest in contesting it.

2 82. The controversy is between persons whose interests are adverse.

3 83. Ms. Flynn has a legally protectable interest in the controversy.

4 84. The issue involved in the controversy is ripe for determination as Ms. Flynn's harm
5 resulted from policies, practices, acts, and omissions of NDOC and its employees, staff,
6 contractors, or agents.

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8 85. Plaintiff seeks a declaratory judgment that the policies, practices, acts and
9 omissions complained of herein violated Plaintiff's rights.

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11 **VII. RELIEF REQUESTED**
12 **(As to all Defendants)**

13 WHEREFORE, Plaintiff requests the following relief from this Court:

- 14 a. Non-economic damages in the sum in excess of \$50,000, or an amount to be determined
15 at the time of trial;
- 16 b. Punitive damages in an amount sufficient to punish Defendants and deter others from
17 like behavior;
- 18 c. All equitable injunctive relief that arises from or is implied by the facts, whether or not
19 specifically requested, including an injunction preventing employees, staff, contractors,
20 or agents of NDOC, along with those acting in concert with them, from carrying out
21 and implementing unlawful policies, practices, and acts that create a substantial risk of
22 harm, including sexual assaults, to Ms. Flynn and other inmates.
- 23 d. Declaration of rights as set forth above;
- 24 e. Award Plaintiff her reasonable attorney's fees and costs incurred in this action; and
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1 f. Such other and further relief as the court deems just and equitable.

2 Dated this 29th day of July 2022.

3 This document does **not** contain the Social Security
4 number of any person.

5 Pursuant to NRS 53.045, I declare under penalty of
6 perjury that the foregoing is true and correct.

7 **AMERICAN CIVIL LIBERTIES**
8 **UNION OF NEVADA**

9 /s/ Sadmira Ramic, Esq. _____

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