

Hon. Marsha J. Pechman

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

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| <p>A.B., et al.,</p> <p>Plaintiffs,</p> <p>v.</p> <p>Washington State Department of Social and Health Services, et al.,</p> <p>Defendants.</p> | <p>No. 14-cv-01178-MJP</p> <p>PLAINTIFFS’ RESPONSE TO DEFENDANTS’ MOTION FOR CLARIFICATION AND RECONSIDERATION</p> |
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I. INTRODUCTION

In its Order (Dkt. No. 131) this Court required that Defendants provide competency services within seven days of the signing of a court order requiring those services, consistent with Constitutional protections. Defendants seek to undermine this requirement by creating loopholes. First, they want to expand the clinical “good cause exception” this Court offered for *completion* of competency services in jail to include the *initiation* of competency or evaluation services at state hospitals. But they have never provided any evidence of a clinical reason to delay admission of class members to the hospital beyond seven days. Second, Defendants want this Court to toll the seven-day rule whenever they file a motion for a “good cause exception”

**PLAINTIFFS’ RESPONSE TO DEFENDANTS’
MOTION FOR CLARIFICATION AND
RECONSIDERATION –1**

14-cv-01178-MJP

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1 seemingly in instances where the exception requested is not for medically necessary reasons.

2 But creating such a loophole would render this Court's Order meaningless because Defendants
3 could file such motions in every case. Third, Defendants want this Court to hold that the seven-
4 day deadline does not apply to class members who exercise their right to have counsel present at
5 the evaluation. However, this Court has already rejected that argument.

6 Plaintiffs concur with two minor clarifications Defendants seek, but this Court should
7 decline Defendants' invitation to change its injunction to a precatory plea. Defendants seek to
8 create loopholes to this Court's Order that would swallow the constitutionally-required seven-
9 day rule. Defendants' proposed modifications of the Order should be denied.

10 **II. ARGUMENT**

11 **A. Failure to Obtain Medical Clearance Should Be the Only Good Cause**
12 **Exception to the Seven-Day Requirement for Class Members Awaiting**
13 **Admission to the State Psychiatric Hospitals.**

14 This Court found that the state psychiatric hospitals are not "equipped to handle all types
15 of medical emergencies." Dkt. No. 131 at 6. With this finding the Court implied that there are
16 medical limitations constraining who the state psychiatric hospitals can admit. Thus, this Court
17 should clarify that Defendants must admit all individuals, who are ordered to receive services at
18 a state psychiatric hospital, within seven days unless Defendants have not received medical
19 clearance for the individual after making a good faith effort to obtain it. Testimony by
20 Defendants' witnesses indicates that medical clearance can be obtained within 24-48 hours of the
21 time it was requested. Verbatim Report of Proceedings ("Verbatim Report"), Vol. 4 at 128.

22 Of concern here, Defendants appear to seek a broader "good cause" exception to the
23 seven-day timeline for admission to a state hospital. *See, e.g.*, Dkt. No. 140 at 2 ("[G]ood cause
24 clinical reasons will arise across all sections of the class.") The Court should reject this argument
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1 and require admission within seven days unless Defendants have been unable to obtain medical
2 clearance and have a documented history of attempting to obtain medical clearance.

3 The “good cause” exception this Court carefully crafted applies exclusively to class
4 members who have been ordered for in-jail competency evaluations and should not apply to class
5 members awaiting admission to a state hospital. *See* Dkt. No. 131 at 22 (“good cause” exception
6 only applied to in-jail competency evaluations and was not mentioned in the sections of the
7 Order relating to admission to the state hospital). Plaintiffs agree with this Court that this
8 exception makes sense only for class members who are being evaluated in jail because there may
9 be clinical reasons that the evaluation cannot be *completed* in seven days. Defendants have not
10 provided evidence of any clinical reasons that class members ordered to undergo competency
11 services at state hospitals should be forced to wait longer than seven days for admission to the
12 state hospital for *initiation* of the services.

13
14 **B. The Seven-Day Timeline Should Begin When a Court Orders Competency Services.**

15 Plaintiffs originally requested that this Court order the seven-day timeline for provision
16 of services to begin once Defendants are in receipt of a court order regarding competency
17 services. However, this Court’s decision to trigger the constitutional protection with the signing
18 of an order for evaluation or restoration comports with the Constitution. Regardless of whether
19 the constitutional timeline is triggered by the signing of the order or Defendants’ receipt of the
20 order, the outcomes for individual class members should not significantly change since
21 Defendants already concede that they receive the court orders within one day of the order being
22 signed in approximately 75% of all cases. Defs.’ Ex. 199. Given that constitutional rights belong
23 to the individual, and the documented timeliness in which most court orders are obtained, the
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1 Court's decision to start the clock at the signing of the order provides strong protections to class
2 members' constitutional rights. The Court should also expect that Defendants take affirmative
3 steps to ensure that they receive court orders on the day that they are signed. If Defendants fail to
4 make a good faith effort to do so, this Court may eventually require Defendants ensure timely
5 receipt of orders for competency services. Starting the constitutional timeline when the order is
6 signed will ensure that Defendants take all possible steps to receive orders as soon as possible.
7 Without such a requirement, there is no motivation for Defendants to promote, let alone
8 facilitate, a system that quickly notifies Defendants of the orders when the constitutional timeline
9 starts upon their notice.

10 **C. The Department Must Provide Services Within Seven Days Unless it Obtains**
11 **a Court Order Finding a Good Cause Exception.**

12 Defendants ask that this Court essentially toll the seven-day timeline any time Defendants
13 move for a state court judge to find a "good cause exception" to the seven-day timeline,
14 regardless of whether the asserted "good cause" is ultimately found to be meritorious. If the
15 Court were to adopt this position, Defendants could file a motion to find a good cause exception
16 in every case and completely evade this Court's order. The Court should deny Defendants'
17 attempt to create a loophole large enough to render the Court's Order meaningless.

18 As this Court noted during trial, Defendants have significant power to influence the
19 actions of criminal justice system stakeholders. *See, e.g.*, Verbatim Report, Vol. 7 at 131.
20 Defendants must work with those stakeholders to develop a procedure to obtain expedited
21 rulings on its motions. It is also possible that in many cases, the parties to a criminal case will
22 agree that the good cause exception applies where the clinical basis for that exception is
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1 apparent. Where this is true, the parties can stipulate to good cause and procure a court's
2 signature promptly.

3 Defendants must at least make an effort to comply with this Court's Order. If, after a
4 good faith effort to work with system stakeholders to comply, Defendants are still unable to meet
5 the seven-day deadline further modifications may become appropriate. If at that time a
6 modification were found to be appropriate, the Court would have the benefit of seeing what steps
7 Defendants have and have not taken and the effects of those steps. With that factual record, any
8 modification could be tailored to the reality of the situation, not speculation before the problem
9 even presents itself and Defendants use their influence to address the situation.

10 **D. Defendants Must Provide Services Within Seven Days Regardless of**
11 **Whether a Class Member Has Exercised Her Right to Counsel.**

12 Defendants seek to relitigate the issue of whether class members who exercise their right
13 to counsel have a due process right to competency services within seven days of a court order.
14 The Court heard and rejected the arguments that Defendants renew in their post-trial brief—
15 namely that defense counsel is often unavailable and a seven-day deadline for providing services
16 is not practicable. *See* Dkt. No. 131 at 11 (“With appropriate planning, coordination, and
17 resources, none of these barriers [including defense counsel availability] prevent Defendants
18 from providing competency services within seven days.”)

19 Defendants must make a genuine effort to work with defense attorneys, rather than
20 offering limited availability of evaluators mostly during times when defense counsel are not
21 available. Defendants must begin providing evaluation services on evenings and weekends and
22 possibly at regular, pre-set times in the jail. Criminal defense counsel for class members will
23 likely be able to attend evaluations if they are consulted promptly and given options of attending
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1 evaluations conducted outside of court hours or routinely on certain days and times such that
2 public defenders can expect that certain hours on certain days will be taken up by evaluation. In
3 those cases where a public defender has been offered a number of evening or weekend times and
4 has still not been able to be present, Defendants may consider seeking a motion for an extension
5 of time for good cause. In the absence of a showing that Defendants have made good-faith
6 efforts to accommodate the predictable schedule constraints of criminal defense attorneys,
7 Defendants' request is simply an excuse to avoid this Court's Order.

8 **III. CONCLUSION**

9 Defendants seek to create loopholes regarding problems they *may* run into once they
10 begin attempting to comply with the Court's Order. This Court should not significantly modify
11 its Order until Defendants have made efforts to comply and have created a record demonstrating
12 that compliance is not practicable.

13 DATED this 29th day of April, 2015

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15 PUBLIC DEFENDER ASSOCIATION

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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

- Sarah Jane Coats (sarahc@atg.wa.gov)
- Amber Lea Leaders (amberl1@atg.wa.gov)
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DATED: April 29, 2015, at Seattle, Washington

/s/La Rond Baker

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