

The Honorable MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Trueblood *et al.*

Plaintiffs,

v.

Washington State Department of Social and
Health Services *et al.*,

Defendants.

NO. 2:14-cv-01178-MJP

DECLARATION OF
VICTORIA ROBERTS IN
SUPPORT OF DEFENDANTS'
RESPONSE TO MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION

I, Victoria Roberts, am over the age of 18 years of age, competent to testify to the matters below, and declare based upon personal knowledge:

1. I am deputy assistant secretary for the Behavioral Health and Service Integration Administration (BHSIA) of the Department of Social and Health Services (DSHS). Currently, I am also the acting assistant secretary while the assistant secretary, Jane Beyer, is out of the office. I am an authorized representative of the Department of Social and Health Services.

2. As deputy assistant secretary, I am responsible for the operation of the three state hospitals. I am also directly responsible for operational issues that cross the divisions and state hospitals, strategic planning, performance management, quality assurance, and risk

DECLARATION OF
VICTORIA ROBERTS

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1 management. These responsibilities include oversight of state hospital policies, procedures
 2 and practices to ensure that they are aligned with DSHS policies and applicable state and
 3 federal laws pertaining to health care facilities. Prior to joining the Department of Social and
 4 Health Services, I served as the associate superintendent of the Stafford Creek Corrections
 5 Center and as the Community Protection Administrator for the Department of Corrections,
 6 where I worked for 27 years.

7 3. I am aware of the current unmet demand for forensic competency evaluation
 8 and restoration services at the state hospitals, and accordingly the Department of Social and
 9 Health Services has worked tirelessly to develop and implement short-term, long-term, and
 10 creative solutions to alleviate the compounding stress on the forensic mental health system.
 11 These efforts have been focused on three main areas: space, staffing, and systemic changes.

12 4. The Legislature sets a biennial funding level for operation of the state
 13 psychiatric hospitals, which includes a specific number of beds for forensic services. Western
 14 State Hospital (WSH) has 270 such beds; Eastern State Hospital (ESH) has 95 such beds.
 15 These numbers have remained stagnant in the face of increasing forensic populations for nine
 16 years. To improve timeliness and expand the available space for forensic patients at the state
 17 hospitals, DSHS has taken the following steps:

18 a. Submitted a decision package to the Office of Financial Management (OFM)
 19 requesting that funding be included in Governor Inslee's 2015-2017 budget submittal
 20 to the State Legislature to open an additional 30 beds at WSH and an additional 5 beds
 21 at ESH. Ex. 1. This additional space, particularly the 30 beds at WSH, would have a
 22 dramatic impact on the current wait list of criminal defendants awaiting competency
 23 services. (See Declaration of Brian Waiblinger ¶ 19)

24 b. Requested an assessment of the capital funding needed to open a currently
 25 unused annex at ESH for forensic patients. Opening of this unit would provide an
 26 additional 15 beds for forensic services.

1 c. Taken steps to improve and streamline forensic bed utilization including
 2 categorizing beds based on average bed days. We have significantly decreased the
 3 time patients who have been found not restorable to competency and have been civilly
 4 committed wait on forensic units before transferring to civil units. We have also
 5 analyzed the possible movement of NGRI patients who have attained the highest level
 6 within the community program and NGRI patients who are medically fragile on to
 7 civil wards.

8 5. The state hospitals have persistently dealt with staffing shortages in all areas of
 9 forensic services, but have faced particularly harsh shortages in forensically trained
 10 psychiatrists and psychologists. With the expansion of Medicaid and implementation of
 11 federal and state mental health parity laws, like much of the country, Washington has major
 12 workforce shortages in behavioral health. Psychiatrists and psychologists are at a premium.
 13 Private, federal, and state agencies viciously compete to recruit professionals from this limited
 14 pool. Moreover, the state hospitals are accredited by the Joint Commission, which is a
 15 requirement to obtain federal Medicare and Medicaid funding for the services they provide.
 16 The accreditation standards include staffing provisions which must be met in order to
 17 maintain accreditation in good standing. To improve and increase the staffing levels needed
 18 to provide adequate care and treatment for the ever-increasing number of forensic patients
 19 referred to the state hospitals; DSHS has taken the following steps:

20 a. Implemented aggressive measures, never before utilized, to recruit
 21 psychiatrists to the state hospitals. These measures include contracting with a national
 22 recruitment firm, actively and aggressively using social media to recruit new staff, and
 23 sending key staff to the American Psychiatric Association's national conference for purposes
 24 of recruitment.

25 b. Submitted a decision package to OFM requesting funding for 3 additional
 26 forensically trained psychologist Full-time Employees (FTEs) to be out stationed in counties

1 with high competency evaluation referral rates, decreasing travel times and allowing more
 2 time to be spent on evaluations. Ex. 2. These FTEs would address recommendations made by
 3 the Joint Legislative Audit and Review Committee (JLARC) 2014 report.

4 c. Submitted a decision package to OFM requesting funding for 2 additional
 5 FTEs to improve performance reporting, improve collaboration between key system partners,
 6 and establish on-going training. Ex. 3. These FTEs would address recommendations made by
 7 the JLARC 2014 report.

8 d. Negotiated, for the 2015-2017 Washington Federation of State Employees
 9 contract, the creation of a new class of employees that has never before existed: forensic
 10 evaluators. The creation of this new class reflects the specialized training and certification
 11 required to work in forensic services and will provide a 15% pay increase for these
 12 individuals, allowing DSHS to better compete in the highly competitive market for forensic
 13 professionals.

14 e. Negotiated, for the 2015-2017 Coalition contract, an annual payment of
 15 \$10,000 for psychiatrists and physicians who are board certified in order to attract more
 16 qualified individuals. DSHS is also pursuing the approval of assignment pay for psychiatrists,
 17 through OFM, to address recruitment and retention issues.

18 6. Given the strong linkage between forensic mental health and the criminal
 19 justice system, forensic services encompass a series of symbiotic relationships that involve
 20 decisions and choices at various levels. DSHS is only one part of this complex
 21 ecosystem. Many of the factors that impact and control demand for competency services,
 22 staffing for these services, and timeliness of evaluations and restoration are not controlled by
 23 DSHS. DSHS does not make the decisions to arrest, charge, or raise competency regarding a
 24 particular individual with mental illness. Nor can we direct city or county decisions related to
 25 mental health services provided in jails to individuals awaiting inpatient competency
 26 evaluation or restoration services. However, DSHS has spearheaded efforts to address

1 systemic change with these community partners, in addition to the internal steps already
 2 discussed. To improve and relieve an incredibly stressed and complicated forensic mental
 3 health system, DSHS has taken the following steps:

4 a. Worked with the legislature in 2013 and 2014 to obtain additional funding
 5 for additional mental health crisis response and crisis diversion services, including evaluation
 6 and treatment facilities, crisis stabilization and crisis triage facilities and mobile crisis
 7 response teams. One of the intended uses of these services is providing an opportunity for law
 8 enforcement officers to divert individuals with mental illness from arrest when their alleged
 9 offense is a nonviolent misdemeanor.

10 b. Organized and led meetings with key stakeholders, including prosecutors,
 11 defenders, jail/corrections, and the judiciary, in various counties, including King, Pierce,
 12 Snohomish, Benton and Franklin counties, to address the systemic difficulties inherent with
 13 the surge in demand for competency services.

14 c. Collaborated with community partners and counties to determine the
 15 feasibility of community or in-custody competency restoration services. Many states utilize
 16 non-hospital based restoration to great effect. DSHS is actively researching and pursuing this
 17 option.

18 d. Taken the unusual step of presenting the severity of the issue to legislative
 19 committees through legislative briefings, prior to approval of the decision packages submitted
 20 to OFM.

21 7. More specifically, concerning plaintiffs' requests for relief, DSHS has already
 22 taken many of the steps requested. Those steps not already implemented carry with them
 23 inherent difficulties, impossibilities, or cannot be implemented in the short-term.

24 8. The plaintiffs' request that DSHS contract with private evaluators to reduce
 25 evaluation wait times has the following impracticalities:
 26

1 a. DSHS is subject to a collective bargaining agreement that does not allow
2 DSHS to contract with private individuals to do the work of state employees without notice to
3 the unions and demand to bargain pursuant to RCW 41.06.142.

4 b. The pool of forensically trained evaluators is small and finite. To practice in
5 this area requires special skills and training that few have. Even if ordered to do so, the dearth
6 of available evaluators makes it incredibly unlikely DSHS will have anyone to contract with.
7 An opportunity for contracting already exists in statute to improve in-custody evaluation wait
8 times, but counties are failing to utilize it. In 2013, the Legislature enacted RCW 10.77.073
9 that allows counties to hire private evaluators for in-custody evaluations. Pierce and Spokane
10 Counties have been able to utilize RCW 10.77.073 to positive effect in large part due to the
11 high number of retired WSH and ESH evaluators living in those respective counties. This
12 resource cadre is unavailable in other parts of Washington, particularly in rural areas of the
13 state and Eastern Washington. No other eligible county has taken advantage of this option.

14 c. Offering \$1500 per case, as plaintiffs suggest, may simply pull evaluators
15 from the state hospitals who could make more money as private contractors than by staying on
16 the state payroll. Such an unintended consequence would interfere with the relief sought by
17 plaintiffs to reduce the evaluation waitlist to below 7 days by maintaining, or even decreasing,
18 the current staffing levels of evaluators.

19 9. Both hospitals fully utilize all currently funded space within hardened security
20 for forensic services. The hospitals are actively reviewing all options for expanding this space
21 to include the physical changes that would be required to make the space habitable as well as
22 ensure adequate security. However, even if additional space can be developed time would be
23 needed to recruit and hire psychiatrists and other core staff, i.e. RNs, psychiatric security
24 attendants, etc.

25 10. The immediate transfer of patients based on broad categories, and absent
26 individualized treatment determinations, puts staff and patients at risk. Further, the state

1 hospitals already make individualized determinations for patients in regard to the appropriate
 2 placement within the hospital. The plaintiffs' request for the immediate transfers of these
 3 broad groups of patients is not feasible because:

4 a. ESH has one civil patient on its forensic units who is awaiting transfer to the
 5 civil unit after converting from a criminal commitment to a civil commitment. WSH has
 6 changed its practices to reduce the number of civil patients on the forensic wards to only those
 7 whose legal posture or psychiatric acuity warrant continued stays on the forensic units.

8 b. Patients determined Not Guilty by Reason of Insanity (NGRIs) require
 9 staffing with different levels of training and certification than patients on civil wards. Patients
 10 cannot be mixed in therapeutic milieus without the appropriate staff and treatment available.
 11 Staff cannot interchange between different clinical populations without the appropriate
 12 training and licensure.

13 c. In spite of some of these logistical difficulties, DSHS is already reviewing
 14 options to move NGRIs in the community program, medically fragile NGRIs, and other high
 15 level NGRIs to other parts of the hospitals. However, none of these movements can happen in
 16 mass without consideration for individualized treatment needs of all patients to be moved,
 17 forensic and civil. Determining the individual treatment needs of the forensic patients alone,
 18 as plaintiffs request, ignores the individualized treatment needs of civil patients that may share
 19 space with these forensic transfers. In addition, transferring patients within the state hospitals
 20 is a dynamic and complicated process, governed by nuanced decisions. Plaintiffs' request to
 21 "immediately transfer" broad and generic groups of patients with no consideration for their
 22 individuals rights and treatment needs, or the treatment rights and needs of civil patients,
 23 except through review by the court, is not only irresponsible and short-sighted, but potentially
 24 detrimental and dangerous to any patients and staff in the path of this massive shuffle.


25 d. Transfer of NGRI patients to civil units has adverse impacts on the civil
 26 population of the hospitals. Civil patients, by their nature, move in and out the hospital at

1 much faster rates than NGRI's, many of whom stay for years. Placement of NGRI patients on
 2 the civil units will decrease bed availability for an already taxed civil commitment system.

3 11. DSHS is committed to addressing delays in competency services. It is a
 4 complex problem that has arisen periodically over the last fifteen years. Each time criminal
 5 defendants face these delays, DSHS has responded with solutions to address the
 6 problem. However, the nature of the problem has continued to evolve, as has the nature of the
 7 needed solutions. DSHS has already implemented measures to address the current surge in
 8 referrals, and has requested new funding to implement measures squarely aimed at alleviating
 9 the on-going pressures.

10 I declare under penalty of perjury under the laws of the State of Washington that the
 11 foregoing is true and correct to the best of my knowledge.

12
 13 Executed this 6th day of October 2014, at Olympia, Washington.

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 15 
 16 VICTORIA ROBERTS
 17 Deputy Assistant Secretary
 18 Behavioral Health and Service Integration
 19 Administration
 20 Department of Social and Health Services
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CERTIFICATE OF SERVICE

Beverly Cox, states and declares as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein. I hereby certify that on this 6 day of October 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

David Carlson: davidc@dr-wa.org

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 6 day of October 2014, at Olympia, Washington.



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