

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASSIE CORDELL TRUEBLOOD, et
al.,

Plaintiffs,

v.

WASHINGTON STATE DEPARTMENT
OF SOCIAL AND HEALTH SERVICES,
et al.,

Defendants.

CASE NO. C14-1178-MJP

ORDER GRANTING IN PART
PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING
ORDER

THIS MATTER comes before the Court on Plaintiffs' Motion for a Temporary Restraining Order. (Dkt. No. 193.) Having heard oral argument and having considered the Parties' briefing, the oral opinions of Dr. Mauch and Dr. Pinals, the observations made by the Court during its March 9, 2016 visit to the Yakima facility, and the related record, the Court GRANTS in part and DENIES in part the Motion.

Discussion

Plaintiffs move the Court for an order preventing Defendants from transferring any class members to the Yakima alternative restoration facility until a full evidentiary hearing can be held regarding whether or not the program complies with this Court's Order directing Defendants to provide timely competency restoration services without sacrificing the therapeutic environment of a psychiatric hospital. (Dkt. No. 193.) Defendants oppose the Motion, arguing that the Motion exceeds the scope of the underlying lawsuit and that Plaintiffs cannot satisfy the elements required for issuance of a temporary restraining order. (Dkt. No. 201.)

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). The standard "is substantially identical for the injunction and the TRO." Stuhlbarg Intern. Sales Co., Inc. v. John D. Brush & Co., Inc., 240 F.3d 832, 839 n.7 (9th Cir. 2001).

At issue here are both the Yakima program's physical facility and its ability to create a therapeutic environment in which class members can receive restoration services. Plaintiffs argue the Yakima facility's environment, necessarily impacted by its location in a former jail, is correctional rather than therapeutic in nature, and therefore does not comply with this Court's April 2, 2015 Order requiring that competency services be provided within seven days "without sacrificing the therapeutic environment of a psychiatric hospital." (Dkt. Nos. 131 at 22, 193 at 2-15.) Plaintiffs also identify several parts of the physical facility that pose an unreasonable risk of serious injury to class members who might attempt to injure themselves or others, including (1) the staircase between the first and second floors, (2) the seclusion and restraint room, (3) the

1 exposed hinges on the bathrooms' shower doors, and (4) the grating covering the facility's air
2 vents. (See Dkt. Nos. 193, 209, 213.)

3 Defendants argue that the Yakima program is not a corrections-based program, pointing
4 to the many differences—both in terms of the physical facility and of the substantive
5 programming provided—between Yakima and the jails where class members currently wait until
6 DSHS can provide them with competency services. (Dkt. No. 201.) Defendants contend that the
7 physical facility has been made safe, and that the program's constant monitoring of class
8 members will ensure they do not harm themselves or others. At oral argument, Defendants
9 conceded that there is no clear, operative policy on the use of seclusion or restraint at the Yakima
10 facility and that there are internal inconsistencies and contradictions between policies produced
11 to the Court thus far, but maintained that a clear policy is forthcoming.

12 At the status hearing, Dr. Mauch, the Court Monitor, and her expert, Dr. Pinals, opined
13 that the staircase and seclusion and restraint room presented serious jumping, falling, and
14 hanging risks. Dr. Pinals also expressed concern about the facility's large storage trunks, which
15 are stackable and may be used to hide behind. Dr. Mauch expressed concern that the grating
16 covering the air vents had not been properly tested to determine whether it presents a hanging
17 risk. The Court Monitor and her expert concluded that while no facility can be made absolutely
18 suicide-proof and constant visual monitoring can reduce many risks, mitigating environmental
19 risks such as those posed by the staircase and the seclusion and restraint room is central to the
20 operation of a safe restoration facility.

21 The Court finds that the Yakima facility's staircase and its seclusion and restraint room
22 present serious and unacceptable risks of irreparable harm to both class members and facility
23 staff. As described in detail by the Court Monitor and Dr. Pinals, the partially covered staircase
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1 allows for jumping or falling from the area and for throwing items down onto others. The
2 exposed metal bars of the railing allow for hanging. While the Court appreciates the Yakima
3 program's commitment to monitoring class members at all times to ensure their safety,
4 monitoring cannot prevent suicide from jumping or hanging in many instances because of the
5 speed with which people intent on harming themselves might accomplish those actions. The
6 Court finds the same hanging risk exists in the seclusion and restraint room due to the internal
7 metal grating covering the window in the room's door. The risks presented by the seclusion and
8 restraint room are amplified here because the Yakima facility does not currently have a clear
9 policy on the use of seclusion and restraint, despite the fact that secluding and restraining a
10 person experiencing psychotic symptoms is one of the riskiest procedures the Yakima facility's
11 staff might undertake. Importantly, secluding or restraining an individual without proper training
12 and a clear set of rules and procedures poses a serious risk of physical injury to facility staff as
13 well as to the class member being restrained, who could also experience significant trauma if the
14 procedure is not handled appropriately.

15 The Court agrees with Defendants, however, that the immediate closure of the Yakima
16 program is not in the best interests of class members or of the public. Closing the Yakima
17 facility would result in an immediate reduction in system-wide capacity, leading to longer wait
18 times for class members desperately in need of competency services. Many class members are
19 currently being held in solitary confinement, where their mental health and physical well-being
20 are deteriorating rapidly. DSHS has decided to spend millions of dollars in public funds on the
21 Yakima program, a decision the Court did not approve and cannot change by ordering the
22 program to close. While Plaintiffs advance several persuasive arguments regarding the efficacy
23 of hospital-jail hybrid restoration programs such as the Yakima program as compared with those
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1 based in psychiatric hospitals, there is not yet sufficient data for the Court to determine that the
2 Yakima program cannot provide therapeutic restoration services with a reasonable level of
3 success. Accordingly, the Court DENIES Plaintiffs' request to halt usage of the Yakima facility
4 until its environment is made equivalent to a hospital's environment, and no temporary
5 restraining order will issue in the form requested by Plaintiffs.

6 Nevertheless, the Court cannot allow class members to be placed in a facility the experts
7 agree is dangerous and presents a real and immediate risk of serious harm to class members.
8 Therefore, as laid out below, the Court issues a modified temporary restraining order preventing
9 the use of the Yakima facility's second floor and seclusion and restraint room unless and until
10 the risks they present have been remediated.

11 The Court derives its authority to issue this order from its Order Modifying Permanent
12 Injunction and the representations made by Defendants in support of their request for additional
13 time to achieve compliance. (Dkt. No. 186.) The Court granted Defendants an additional five
14 months to come into compliance—instead of holding Defendants in contempt—based on the
15 understanding that DSHS had two additional facilities in which it could safely provide
16 competency restoration services to class members. Defendants represented to the Court that the
17 alternative restoration facilities and the care provided there would be similar and comparable to
18 that of the state hospitals, and that the "Department's alternative sites for restoration will be set
19 up as therapeutic environments." (Dkt. No. 183 at 2.) Instead, class members are being placed
20 in a facility that presents several serious risks of harm not present at the state hospitals.

21 Furthermore, the Court's grant of additional time to achieve compliance was contingent
22 upon Defendants complying with a series of interim benchmarks and deadlines. The Yakima
23 facility was to have a policy on the use of seclusion and restraint in place by March 7, 2016.

1 (Dkt. No. 186 at 13.) Yet, as discussed above, the facility had no policy in effect as of the date
2 of the April status hearing, despite the fact that Yakima staff had already performed a restraint
3 procedure on at least one class member. Defendants' violation of this mandatory provision,
4 along with Defendants' decision to place class members in a facility that poses areas of
5 significant danger, necessitate issuance of this order.

6 Accordingly, Plaintiffs' Motion for Temporary Restraining Order is GRANTED in part.

7 **IT IS HEREBY ORDERED that:**

8 (1) No class member may be housed on, or allowed access to, the second floor of the
9 Yakima alternative restoration facility unless and until the jumping, falling, and hanging risks
10 posed by the staircase have been remediated. This includes accounting for the hanging risk
11 presented by the vertical pipes attached to the staircase's treads. The barrier must be high enough
12 to eliminate the risk that items can be thrown from the stairs to the floor below. Defendants must
13 seal off the staircase so that it may not be used or accessed, and may only allow access to the
14 staircase once it has been made safe for class members.

15 (2) The Yakima alternative restoration facility's seclusion and restraint room may not
16 be used unless and until it is made safe for use. To make the room safe for use, Defendants must
17 remediate the hanging risk posed by the interior metal grating covering the window in the room's
18 door. Additionally, before the room can be used, the facility must adopt a clear policy on the use
19 of seclusion and restraint as required by the Court's Order Modifying Permanent Injunction,
20 must secure approval of that policy from the Court Monitor, and must train its staff about that
21 policy.

22 (3) The bond requirement is waived.
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1 This temporary restraining order will remain in effect until April 22, 2016, or until proof
2 of compliance has been submitted to the Court and the Court Monitor and is found acceptable by
3 the Court, whichever is earlier. Plaintiffs may apply for an extension of the order, if appropriate.

4 SO ORDERED.

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6 The clerk is ordered to provide copies of this order to all counsel.

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8 Dated this 12th day of April, 2016.

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12 Marsha J. Pechman
13 United States District Judge
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