

The Honorable MARSHA J. PECHMAN

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

CASSIE CORDELL TRUEBLOOD, next friend
of A.B., an incapacitated person, et al.,

Plaintiffs,

v.

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

Defendants.

NO. 2:14-cv-01178-MJP

DECLARATION OF
INGRID LEWIS

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

1. As the Community Liaison and Diversion Specialist, I am a member of the Office of Forensic Mental Health Services (OFMHS) within the Behavioral Health Administration (BHA). I am responsible for communicating with the court system, jails, law enforcement, community mental health programs, behavioral health organizations, state hospitals and others; coordinating efforts to comply with the *Trueblood* court order and implement Senate Bill 5177; creating systems to ensure effective and efficient delivery of statewide forensic services; and organizing stakeholder efforts to divert individuals with behavioral health issues from criminal justice involvement.

2. Since August 2015, I have met with 11 counties in an effort to work with stakeholders and partners in the community to comply with the *Trueblood* court order. I have reached out to stakeholders in several other counties who have expressed interest, but have not yet been able to convene meetings. We have made significant improvements in working with our system partners to reduce in-jail evaluation wait times, including:

- a. Creating Outstations: Snohomish (November 2015); SCORE (October 2015); Clark (February 2016, April 2016); Kennewick (July 2016)
- b. Coordinating evaluations and court calendars: Lewis, Benton/Franklin
- c. Regularly scheduled visiting evaluator in Thurston, Kitsap, Yakima and Lewis counties as of the end of December 2015

3. We are moving forward with a pilot coordinated evaluation calendar in King County Superior Court. This was a huge undertaking that began development in July 2015. Stakeholders included the King County Executive's Office, jail, prosecutor's office, defense counsel, Superior Court, District Court, Seattle Municipal Court, and King County Department of Community and Human Services. The pilot program allows for real-time scheduling of forensic evaluations at the same time as the court order for evaluation is entered. This pilot program went live May 31, 2016.

4. In order to meet the seven-day deadline set by this Court, face-to-face evaluations must be scheduled within two or three days of a Court's order. DSHS has been working with stakeholders since July 2015 on the following barriers to scheduling evaluations within that timeframe:

- a. Defender availability – Due to a variety of factors including slow response times from counsel, counsel not offering available times within seven days, and counsel's previously scheduled court appearances, coordinating schedules for evaluations has often been a challenge. For example, in the first quarter of 2016, 18.9% of WSH in jail competency evaluation referrals indicated that there was a delay to complete the case due to

1 attorney/interpreter scheduling conflicts. The Department and county
 2 defenders have worked together on a number of mitigation solutions
 3 including: individual follow-up with attorneys who don't timely respond;
 4 and alerting trial judges of the need for a competency evaluation so a
 5 criminal trial can be recessed to accommodate the evaluation.

6 b. Lack of space at jails for evaluations to take place – space is a commodity at
 7 the jails. Finding space(s) at jails where evaluators can conduct evaluations
 8 that can safely accommodate the defendant, defense counsel, and an
 9 interpreter if necessary is difficult in many jurisdictions. Jails have stated
 10 that DSHS is one of many entities competing for a limited amount of space
 11 (i.e., defense counsel meeting with clients, Department of Corrections, jail
 12 programming, staff trainings, etc). Jails have expressed a willingness to
 13 reserve specific times for access, but negotiating a consistent and
 14 predictable time for face to face evaluations convenient for all parties
 15 involved is difficult, particularly in high volume jurisdictions like King and
 16 Spokane counties. The unpredictable nature of scheduling time for specific
 17 access to conduct evaluations continues to be a barrier to quickly and
 18 efficiently access jail space.

19 c. DSHS has explored the possibility of having evaluations coordinated with
 20 court dockets, if courts would designate “mental health” docket days. There
 21 has been some reluctance by some courts to establish competency calendars
 22 or dockets, and thus minimal progress has been made in establishing such
 23 dockets.

24 d. Within a county, all courts operate independently from each other. When
 25 trying to coordinate a system within a county, a plan or program that would
 26 work in superior court, is not always a good fit for the district or municipal
 courts. This makes setting up a unified system, even within a single county,
 very difficult, let alone trying to standardize practices statewide. As noted
 above, even coordinating something as uncontroversial as an evaluation

1 calendar in King County took multiple stakeholders and over 10 months to
2 accomplish.

3 5. Restoration - Court orders – Between 4/1/16 and 5/19/16, 14 of 44 court orders
4 for restoration at WSH were outdated, meaning the court and parties did not utilize the
5 standardized form issued by the Administrative Office of the Courts (AOC) in December
6 2015. The Department has made multiple attempts at informing stakeholders of the
7 importance of utilizing the new AOC court orders in order to quickly and efficiently admit
8 defendants into a treatment facility, but some courts remain reluctant to adopt the new orders.
9 Failing to use the new orders can lead to delays in using the new alternate facilities or a longer
10 wait time overall for individual defendants because the Department cannot exercise its
11 statutory discretion to place a defendant in the appropriate restoration facility. Many courts
12 issue orders that direct treatment can only happen in the state hospital, contrary to state law
13 and therefore an order needs to be amended to allow treatment to occur outside of the state
14 hospital.

15 6. In addition to communicating to county stakeholders, including judges,
16 defenders and prosecutors, during community meetings, the following communications were
17 sent to criminal justice stakeholders electronically:

- 18 a. Notification of new AOC competency court orders -12/31/15
- 19 b. Memo from Assistant Secretary Carla Reyes requesting courts to use the
20 new court orders – 2/26/16
- 21 c. Yakima fact sheet informing courts, prosecutors and defenders regarding the
22 alternate site which included general information on the facility, amending
23 court orders, and visitation – 3/17/16
- 24 d. Triage memo: sent to jails 3/21/16; and sent to defenders 4/7/16
- 25 e. Info regarding jail transport for the alternate facilities sent to jails – 4/20/16
- 26 f. Alternate site one-page information sheet sent to jails, defenders, courts, and
 prosecutors – 5/31/16

7. The Department continues to identify points of inefficiency and is working to
develop sustainable solutions to those issues, including:

- a. Centralized scheduling at Eastern State Hospital
- b. LEAN event at Western State Hospital to develop a centralized and more streamlined scheduling and admissions process – 5/3/16
- c. Implementation of mobile solutions for evaluators in outstations and in the field to allow the capacity to access DSHS systems and electronic health records remotely and support digital transcription of reports.

8. Diversion is key to DSHS's long-term success in the provision of competency services. Our long term goal is to continue working with system partners to reduce the number of unnecessary evaluation and restoration of defendants. In many instances, individuals currently being referred for services could be better served by diversion from the criminal justice system and treated within the civil system in their communities. We have looked into the Groundswell recommended and nationally recognized "sequential intercept model" (Munetz & Griffin, 2006), "through which resources are allocated at *all points in the criminal justice process* (e.g., working with police to divert mentally ill individuals prior to arrest, diversion at the point of arrest, diversion from jail, pre-trial diversion, as well as services post-arraignment and post-trial). Proponents of the model emphasize that the greatest systematic impact occurs at the beginning of model – from community providers, law enforcement, corrections, and the judiciary." Many of our partners have implemented innovative diversion programs that target specific points on the continuum, but do not span it due to the availability of resources.

9. In 2015, the Legislature passed 2E2SSB 5177 (2015), which allows a prosecutor to use their discretion to dismiss a non-felony charge without prejudice if the issue of competency is raised and to refer the defendant for mental health, substance abuse, or developmental disability services. This legislation was intended to provide a pretrial diversion option for prosecutors.

10. DSHS also received funding for this diversion initiative in ESSB 6052 (2015). DSHS considered three avenues for distributing the \$4.8M state and federal funds allocated to prosecutorial diversion. The dollars could either be 1) incorporated into the Medicaid rates which would distribute the funds to 10 behavioral health organizations but would limit the flexibility of supports communities require to adequately address the needs of the target

1 population by tying funding to Medicaid and Medicaid restrictions; 2) fund several
2 prosecutorial diversion pilot projects throughout the state, but forgo the Medicaid and
3 Medicaid match dollars provided, reducing the amount of funding available for programming;
4 or 3) enter into discussions with CMS to explore structuring the diversion funding the same
5 way that DSHS funded the WiSE program. DSHS made the determination that most
6 meaningful way to utilize the available dollars was to publish a Request for Information (RFI)
7 for diversion pilot programs.

8 11. DSHS released the RFI for the prosecutorial diversion dollars on 2/4/16. The
9 RFI was sent to all RSN administrators, the Health Care Authority, Early Adopter Region
10 contacts, the Washington Association of Prosecuting Attorneys, and the Washington State
11 Association of Counties. Proposals were due 2/26/16.

12 12. Seven total proposals were received: Lewis County, Greater Columbia RSN,
13 Pacific County, Jefferson County, Thurston County, King County, and Spokane County. 2
14 DSHS representatives, along with a Pierce County defender, a Snohomish County defender,
15 and a City of Everett prosecutor reviewed and scored the proposals.

16 13. On 3/11/16, an announcement was sent to all applicants informing them of the
17 status of their proposals. King County BHO, Great Rivers BHO, Greater Columbia BHO, and
18 Spokane BHO were awarded funding. DSHS was able to fund 2 west side and 2 east side
19 counties/regions, and 2 urban and 2 rural areas. Contracts were sent to contractors 4/21/16.

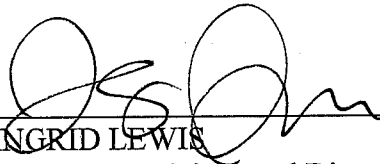
20 14. As of 06/02/16, DSHS has received fully executed contracts from all four
21 Contractors.

22 15. In the short term, the prosecutorial diversion contracts require contractors to
23 participate in quarterly meetings convened by DSHS to discuss the progress of projects,
24 troubleshoot barriers, and share resources and ideas. All Contractors have begun recruiting
25 staff for their respective projects, drafting policies and procedures, and convening
26 multidisciplinary workgroups in order to begin accepting referrals into the programs beginning
July 1, 2016. There have been discussions to have programs present at statewide conference(s)
in order to share ideas and resources with other communities. In addition, the Governor's
Office is hiring a consultant to perform community stakeholder interviews regarding diversion

1 needs. The consultant's recommendations and report will be shared with the community by end
2 of year.

3 I declare under penalty of perjury under the laws of the United States and the State of
4 Washington that the foregoing is true and correct to the best of my knowledge.

5 Signed this 6 day of June 2016, at Olympia, Washington.

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8 INGRID LEWIS
9 Community Liaison and Diversion Specialist
10 Office of Forensic Mental Health Services
11 Behavioral Health Administration
12 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 6th day of June 2016, 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:

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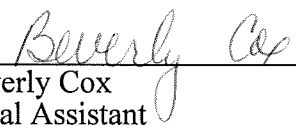
Christopher Carney: Christopher.Carney@CGILaw.com

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Kenan Lee Isitt: kenan.isitt@cgilaw.com

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 June 2016, at Olympia, Washington.


Beverly Cox
Legal Assistant

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