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 DOROTHY SAWYER IN SUPPORT OF DEFENDANTS' RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I, Dorothy Sawyer, 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 the Chief Executive Officer of Eastern State Hospital (ESH) in Medical Lake, Washington. I am an authorized representative of the Department of Social and Health Services.

2. Eastern State Hospital has four units: the Adult Psychiatric Unit, the Geriatric Psychiatric Unit, the Habilitative Mental Health Unit, and the Forensic Services Unit (FSU). FSU is the ESH unit that admits patients awaiting forensic evaluation, restoration and other forensically related matters.

ATTORNEY GENERAL OF WASHINGTON
7141 Cleanwater Dr SW
PO Box 40124
Olympia, WA 98504-0124
(360) 586-6565

3. As Chief Executive Officer, I am aware of the process concerning admissions to ESH for competency evaluation and restoration treatment services. My overall responsibilities include ensuring that the care and treatment meets statutory, constitutional, regulatory, and community standards concerning the provision of individualized medical services for the patients at ESH.

4. The Legislature has authorized ESH to staff a finite numbers of beds: 95 forensic beds and 192 non-forensic beds. In addition to the competency-related admissions, the forensic wards also house those adjudicated as not guilty by reason of insanity (NGRI)(including those detained pending revocation of a conditional release and those in the "Partial Community Program" – a partial conditional release status in which the patients are housed at ESH) and occasionally those awaiting civil commitment proceedings after their felony or misdemeanor charges have been dismissed due to incompetency ("felony conversion" cases).

5. The forensic units are currently running at near 100% occupancy. All existing space with hardened security is being used, except for 5 beds on ward 1 South 1. However, those beds would require an additional psychiatrist to be utilized. Aside from vacancies created when defendants admitted for competency evaluation or restoration are discharged back to the jail, vacancies for competency-related admissions occur only when there are unexpected cancelations of admissions, when rooms require maintenance, or other exigencies. The current waitlist is approximately 112 defendants, of which 54 are awaiting competency evaluations in jail. Initial 90 day felony restoration cases on the waitlist is currently zero. Initial 45 day felony restoration cases are waiting approximately 6 days. Inpatient evaluations are waiting approximately 35 days and misdemeanor restoration cases are waiting approximately 5 days or less.

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6. ESH also conducts competency evaluations for individuals in-custody in a county jail. These in-custody evaluation cases are waiting approximately 22 days. Approximately nine patients awaiting an in-custody evaluation are seen each week.

7. ESH covers a regional area that includes 20 counties covering a large area. All of ESH's forensic evaluators are based at ESH, in Spokane County. The vast distances between the various counties create unique difficulties for ESH in coordinating and staffing the in-custody evaluations in those counties. The in-custody evaluations require coordination with multiples parties including prosecution and defense, jail staff and security, and occasionally interpreters. Patients also have the right to refuse or the right to request their attorney is present for the evaluation.

8. Pre-trial defendants and NGRIs require a different level of staffing and security than individuals on civil units. While the acuity of civil patients is typically higher, NGRI patients require specialized levels of staff competency and security. NGRI patients are subject to a criminal order under the statutory framework of RCW 10.77. Civil patients are subject to RCW 71.05.

9. To the extent that admissions or evaluations are delayed, the delay is due to factors outside of ESH's control. There was an increase of in-custody evaluation court orders received January to June 2014 compared to the same period in 2013. Evaluators completed 364 in-custody evaluations January through June 2014 compared to 304 in custody evaluations January through June 2013. Court orders for inpatient restoration number 15 for January to June 2014 compared to 32 January to June 2013.

10. National standards recommend state psychiatric hospitals should ideally operate at 85% capacity. The forensic and civil sides of ESH consistently operate at essentially 100% capacity. With a legislative limitation on funded beds, shifting forensic patients to civil wards, even those forensic patients whose mental health is comparatively stable, would have consequences and potentially negative impacts on those who have been

adjudicated as gravelly disabled or a danger to self or others as a result of a mental disorder and in need of longer-term civil treatment. Civil waitlists could increase with such an influx, and the current treatment of the civil patients will be seriously and negatively impacted with the redirection of patients and resources. In addition, because the civil wards do not meet the security requirements of forensic wards, they would require upgrades and retrofitting to make them hardened and secure.

11. Reducing the waitlist for individuals awaiting competency evaluations by increasing the number of evaluations in a short period of time, would negatively impact the restoration wait times. Approximately 54 individuals are awaiting in-custody evaluations. Based on historical averages, approximately 30% of those will be referred for competency restoration.

12. Generally, individuals charged with felonies and awaiting admission to begin their initial competency restoration periods are admitted in the order in which the court orders are filed. On occasion, however, ESH will admit a defendant who presents with medical issues that justify admitting that person out of order. ESH does not ultimately refuse admission to anyone referred, unless a medical condition exceeds what ESH could appropriately care for. ESH requires all patients to meet medical stability criteria in order to be to be admitted.

13. ESH has made, and will continue to make, good faith efforts to admit and evaluate all defendants awaiting competency services at the earliest date possible. Contrasted with our counterpart, WSH, ESH faces greater difficulties with in-custody and inpatient evaluations than with inpatient restoration. As noted above, inpatient restoration cases wait very little time, if at all. In response to the challenges we face, ESH has taken steps to reduce current wait times, particularly in-custody evaluation wait times, through a number of steps. ESH works collaboratively with the jails, prosecution and defense to coordinate in-custody evaluations. In the past 8-12 months, ESH has enhanced its efforts to communicate

effectively with these community partners in scheduling evaluations more efficiently. Once documents are received, ESH notifies the prosecutor and defense attorney to immediately begin coordinating an evaluation date. ESH will work with defense attorneys who wish to be present, and will provide court status updates when that collaboration has languished, rather than allowing the defendant to continue waiting.

14. ESH has also worked with the county jails to coordinate discharges of inpatient individuals, ensuring they leave the hospital in a timely fashion. ESH has also become more proactive in planning the discharge of those receiving competency restoration services. ESH reviews patients' progress sooner, returning those who are competent prior to the end of the full restoration period if clinically indicated. ESH is also working to better predict the need for additional restoration periods and making those requests earlier. ESH is also working with various counties on efficiently scheduling transports, so as not to have any days with no admissions scheduled.

15. Further, DSHS, on behalf of ESH, has submitted a decision package requesting 5 additional forensic beds. Current demand for forensic beds cannot be met within the existing bed capacity. Introducing operating efficiencies have reduced the impact of the growing forensic population in Washington, but more must be done to keep pace with the national trend of increasing forensic referrals of the mentally ill swept into the criminal justice system.

16. More specifically, concerning to plaintiffs' requests for relief, ESH has already taken many of the steps requested, and those steps not already implemented carry with them inherent difficulties, impossibilities, or cannot be implemented in the short-term.

17. Plaintiffs' request that ESH contract with private contractors for evaluations is impractical and not workable. The pool of forensic evaluators is small and finite. Even if ordered to do so, the dearth of available evaluators makes it incredibly unlikely ESH will have anyone to contract with. Spokane County has been able to utilize RCW 10.77.073 with some

effectiveness, but this is not true for the other counties in Eastern Washington. ESH is particularly impacted by this limited number of evaluators, with some counties having zero forensic evaluators in the entire area. ESH intends to explore the possibility of recruiting private evaluators in Benton, Franklin and Yakima Counties.

18. ESH already uses all existing space with hardened security for forensic services that it can. An additional 5 beds could be used if a psychiatrist could be recruited and hired. All useable hardened space is essentially at 100% capacity.

19. The immediate transfer of patients based on broad categories, and absent individualized treatment determinations, puts staff and patients at risk. Further, the state hospitals already make individualized determinations for patients in regard to the appropriate placement within the hospital. Plaintiffs' request for the immediate transfers of these broad groups of patients is not feasible because:

a. ESH has one civil patient on its forensic units as of today who is awaiting transfer to the civil unit after converting from a criminal commitment to a civil commitment. Occasionally ESH will have patients who have been adjudicated incompetent, charges have been dismissed, and they have been referred for civil commitment pursuant to RCW 10.77.086(4) that will occupy a forensic bed until a civil order is entered. But even at its peak, ESH rarely has any more than 2-3 of these patients.

b. Patients determined Not Guilty by Reason of Insanity (NGRIs) require staffing with different levels of training and certification than patients on civil wards. Patients cannot be mixed in therapeutic milieus without the appropriate staff and treatment available. Different types of patients also require different levels of security. Hardened security space at ESH means it has special modifications and additions including sally ports, a secured yard, and additional cameras. Comparatively, civil units do not have video equipment, have only one locked door rather than sally ports, and the yards are fenced but not secured. Civil wards are not secured in the same way as forensic wards because the patient populations are

significantly different. Furthermore, staff cannot interchange between different clinical populations without the appropriate training and licensure. Many forensic staffing classifications require training in forensics and additional schooling or certifications (e.g. mental health technicians, who work on civil units, require less education and experience than psychiatric security assistants, the equivalent position in the forensic units).

c. The transfers that plaintiffs suggest cannot happen in mass without consideration for individualized treatment needs of all patients to be moved, forensic and civil. Determining the individual treatment needs of the forensic patients alone, as plaintiffs request, ignores the individualized treatment needs of civil patients that may share space with these forensic transfers. In addition, transferring patients within the state hospitals is a dynamic and complicated process, governed by nuanced decisions. Plaintiffs' request to "immediately transfer" broad and generic groups of patients with no consideration for their individuals rights and treatment needs, or the treatment rights and needs of civil patients, except through review by the court, is not only irresponsible and short-sighted, but potentially detrimental and dangerous to any patients and staff in the path of this massive shuffle.

d. Patient movement varies daily at ESH, from none to 15-20 depending on admissions, discharges and transfers. These decisions are made on a daily basis, and take into consideration the needs of the patients being admitted and those who may need to transfer to make room on the admission wards for the civil units. Subjecting transfers of certain patients to court oversight, and the often slow processes and procedures of the judicial system, would unnecessarily burden the hospital, parties, and courts. Requiring judicial intervention in each of these cases to determine whether transfer is or is not appropriate, at every moment where transfer might be warranted under rapidly changing circumstances, would cause the entire hospital to grind to a halt.

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

much faster rates than NGRIs, many of whom stay for years. Placement of NGRI patients on the civil units decreases bed availability for an already taxed civil commitment system. The civil units at ESH are essentially at 100% capacity at this time.

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

Executed this 6th day of October 2014, at Medical Lake, Washington.

Dorothy L. Sawyer

DOROTHY SAWYER, FACHE
Chief Executive Officer, Eastern State Hospital

ATTORNEY GENERAL OF WASHINGTON
7141 Cleanwater Dr SW
PO Box 40124
Olympia, WA 98504-0124
(360) 586-6565

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

Emily Cooper: emilyc@dr-wa.org

Sarah A. Dunne: dunne@aclu-wa.org

Margaret Chen: mchen@aclu-wa.org

Anita Khandelwal: anitak@defender.org

Christopher Carney: Christopher.Carney@CGILaw.com

Sean Gillespie: Sean.Gillespie@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 October 2014, at Olympia, Washington.

Beverly Cox

BEVERLY COX
Legal Assistant
Office of the Attorney General
7141 Cleanwater Drive SW
PO Box 40124
Olympia, WA 98504-0124
(360) 586-6565