

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

A.B., by and through her next friend  
Cassie Cordell Trueblood, *et al.*,

Plaintiffs,

v.

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

Defendants.

No. 14-cv-01178-MJP

STIPULATION AND PROPOSED  
ORDER CERTIFYING CLASS

**I. STIPULATION**

The parties, by and through their counsel of record, stipulate to the certification of a class pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2), described as follow:

All persons who are now, or will be in the future, charged with a crime in the State of Washington and: (a) who are ordered by a court to receive competency evaluation or restoration services through DSHS; (b) who are waiting in jail for those services; and (c) for whom DSHS receives the court order.

The parties stipulate that Defendants cannot perform competency evaluation and restoration services without receipt of the necessary information, which may include the court

Stip. and Prop. Order Certifying Class  
No. 14-cv-01178-MJP - 1

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901 FIFTH AVENUE #630  
SEATTLE, WA 98164  
(206) 624-2184

referral, charging documents, discovery and criminal history information. *See* Wash. Rev. Code § 10.77.068(1)(b). The parties also stipulate that when Defendants receive an incomplete referral, it is incumbent upon Defendants to make efforts to expeditiously obtain any of the necessary information not provided. Finally, this stipulation does not deprive the parties of their right to later seek a new class definition, nor does it deprive the Court of its discretion to redefine the class as may be later necessary and appropriate.

DATED this 30th day of October, 2014.

Respectfully submitted,

ACLU OF WASHINGTON FOUNDATION

/s/ Sarah A. Dunne

Sarah A. Dunne, WSBA No. 34869  
La Rond Baker, WSBA No. 43610  
Margaret Chen, WSBA No. 46156  
900 Fifth Avenue, Suite 630  
Seattle, Washington 98164  
(206) 624-2184  
dunne@aclu-wa.org  
lbaker@aclu-wa.org  
mchen@aclu-wa.org

CARNEY GILLESPIE ISITT PLLP

/s/ Christopher Carney

Christopher Carney, WSBA No. 30325  
Sean Gillespie, WSBA No. 35365  
Kenan Isitt, WSBA No. 35317  
315 Fifth Ave South, Suite 860  
Seattle, Washington 98104  
(206) 445-0212  
Christopher.Carney@CGILaw.com  
Sean.Gillespie@CGILaw.com  
Kenan.Isitt@CGILaw.com

DISABILITY RIGHTS WASHINGTON

/s/ David Carlson

Stip. and Prop. Order Certifying Class  
No. 14-cv-01178-MJP - 2

ROBERT W. FERGUSON  
Attorney General

/s/ Sarah J. Coats

Sarah J. Coats, WSBA No. 20333  
Amber L. Leaders, WSBA No. 44421  
John K. McIlhenny, WSBA No. 32195  
Nicholas A. Williamson, WSBA No. 44470  
Office of the Attorney General  
7141 Cleanwater Drive SW  
P.O. Box 40124  
Olympia, WA 98504-0124  
(360) 586-6565  
Sarahc@atg.wa.gov  
Amberl1@atg.wa.gov  
JohnM5@atg.wa.gov  
NicholasW1@atg.wa.gov

*Attorneys for Defendants*

AMERICAN CIVIL LIBERTIES UNION OF  
WASHINGTON FOUNDATION  
901 FIFTH AVENUE #630  
SEATTLE, WA 98164  
(206) 624-2184

1 David R. Carlson, WSBA No. 35767  
Emily Cooper, WSBA No. 34406  
2 315 Fifth Avenue South, Suite 850  
Seattle, WA 98104  
3 (206) 324-1521  
davidc@dr-wa.org  
4 emilyc@dr-wa.org

5 PUBLIC DEFENDER ASSOCIATION

6 /s/ Anita Khandelwal  
Anita Khandelwal, WSBA No. 41385  
7 810 Third Avenue, Suite 800  
Seattle, Washington 98104  
8 (206) 447-3900  
anitak@defender.org

9 *Attorneys for Plaintiffs*  
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## II. ORDER

Based on the foregoing stipulation made by the parties herein, Plaintiffs' Motion for Class Certification and supporting documents, Dkt. Nos. 34-40, and Defendants' Response to Plaintiffs' Motion for Class Certification and supporting documents, Dkt. Nos. 79-80, the Court certifies the following class pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2):

All persons who are now, or will be in the future, charged with a crime in the State of Washington and: (a) who are ordered by a court to receive competency evaluation or restoration services through DSHS; (b) who are waiting in jail for those services; and (c) for whom DSHS receives the court order.

"The decision to grant or deny class certification is within the trial court's discretion." *Bateman v. American Multi-Cinema, Inc.*, 623 F.3d 708, 712 (9th Cir. 2010). In order to grant class certification, the Court must determine that the criteria of Rule 23(a) are met and that the class fits within one of the three categories of Rule 23(b). *Unthaksinkun v. Porter*, C11-0588JLR, 2011 WL 4502050, at \*6 (W.D. Wash. Sept. 28, 2011) (quoting *Wal-Mart Stores, Inc. v. Dukes*, — U.S. —, 131 S.Ct. 2541, 2551, 180 L.Ed.2d 374 (2011)).

### A. Fed. R. Civ. P. 23(a)(1): Numerosity

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." The Court finds that joinder of all members of the proposed class would be impractical because of their number and dispersion, and because there are many unnamed, unknown future class members.

### B. Fed. R. Civ. P. 23(a)(2): Commonality

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." This standard is interpreted liberally in a civil rights suit such as this one, in which "the lawsuit challenges a system-wide practice or policy that affects all of the putative class members."

1 *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001), *abrogated on other grounds by Johnson*  
2 *v. California*, 543 U.S. 499, 504-05 (2005). The Court finds that commonality is satisfied  
3 because each named Plaintiff and putative class members asserts that: (1) Defendants' conduct  
4 violates their due process rights under the Fourteen Amendment of the United States  
5 Constitution and (2) Defendants should be enjoined as such an injunction would provide  
6 classwide resolution.

7 **C. Fed. R. Civ. P. 23(a)(3): Typicality**

8 Under Rule 23(a)(3), typicality is satisfied "if the claims or defenses of the representative  
9 parties are typical of the claims or defenses of the class." The Court finds that the claims of the  
10 named Plaintiffs are typical of the claims of the proposed Class. Each of the named Plaintiffs has  
11 alleged harms resulting from prolonged detention in jails while awaiting court-ordered  
12 competency evaluation or restoration services from Defendants.

13 **D. Fed. R. Civ. P. 23(a)(4): Adequacy of Representation**

14 Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect  
15 the interests of the class." The Court finds that the named Plaintiffs are adequate class  
16 representatives. None of the named Plaintiffs have interests in conflict to the Class and that the  
17 named Plaintiffs and the Class share a common interest in a remedy that will prevent further  
18 violations of their rights under the United States Constitution. The Court also finds that  
19 organizational Plaintiff Disability Rights Washington ("DRW") is an adequate class  
20 representative. The interests of DRW and the Class are in complete alignment, as DRW's  
21 constituency includes every putative class member waiting in jail for competency evaluation and  
22 restoration by Defendants for a mental disability that affects competency to stand trial.

1 In addition, the Court has no concerns regarding the adequacy of counsel: they have and  
2 will undoubtedly continue to competently, vigorously, and ethically pursue this litigation.

3 **E. Fed. R. Civ. P. 23(b)(2)**

4 A class that satisfies the requirements of Fed. R. Civ. P. 23(a) may be certified if  
5 defendants have “acted or refused to act on grounds that apply generally to the class, so that final  
6 injunctive relief or corresponding declaratory relief is appropriate respecting the class as a  
7 whole.” Fed. R. Civ. P. 23(b)(2). Plaintiffs allege that Defendants are violating their due process  
8 rights by failing to timely provide competency evaluation and restoration services as required by  
9 state law. Plaintiffs seek a court order declaring Defendants’ conduct unconstitutional and  
10 requiring Defendants to provide such services in a timely manner. Because the relief sought is  
11 systemic, rather than individual, classwide injunctive or declaratory relief may be appropriate.  
12 Certification under Rule 23(b)(2) is also appropriate.

13  
14 For all of the foregoing reasons, the Court certifies a class pursuant to Fed. R. Civ. P.  
15 23(a) and 23(b)(2) with Plaintiffs A.B., D.D., K.R., and Disability Rights Washington as Class  
16 representatives, and Disability Rights Washington, the Public Defender Association, the  
17 American Civil Liberties Union of Washington Foundation, and Carney Gillespie Isitt PLLP as  
18 Class counsel.

19 IT IS SO ORDERED.

20 Dated this 30th day of October, 2014.

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23 Marsha J. Pechman  
Chief United States District Judge

Presented by:

ACLU OF WASHINGTON FOUNDATION

/s/ Sarah A. Dunne

Sarah A. Dunne, WSBA No. 34869  
La Rond Baker, WSBA No. 43610  
Margaret Chen, WSBA No. 46156  
900 Fifth Avenue, Suite 630  
Seattle, Washington 98164  
(206) 624-2184  
dunne@aclu-wa.org  
lbaker@aclu-wa.org  
mchen@aclu-wa.org

CARNEY GILLESPIE ISITT PLLP

/s/ Christopher Carney

Christopher Carney, WSBA No. 30325  
Sean Gillespie, WSBA No. 35365  
Kenan Isitt, WSBA No. 35317  
315 Fifth Ave South, Suite 860  
Seattle, Washington 98104  
(206) 445-0212  
Christopher.Carney@CGILaw.com  
Sean.Gillespie@CGILaw.com  
Kenan.Isitt@CGILaw.com

DISABILITY RIGHTS WASHINGTON

/s/ David Carlson

David R. Carlson, WSBA No. 35767  
Emily Cooper, WSBA No. 34406  
315 Fifth Avenue South, Suite 850  
Seattle, WA 98104  
(206) 324-1521  
davidc@dr-wa.org  
emilyc@dr-wa.org

PUBLIC DEFENDER ASSOCIATION

/s/ Anita Khandelwal

Anita Khandelwal, WSBA No. 41385  
810 Third Avenue, Suite 800

Stip. and Prop. Order Certifying Class  
No. 14-cv-01178-MJP - 7

ROBERT W. FERGUSON  
Attorney General

/s/ Sarah J. Coats

Sarah J. Coats, WSBA No. 20333  
Amber L. Leaders, WSBA No. 44421  
John K. McIlhenny, WSBA No. 32195  
Nicholas A. Williamson, WSBA No. 44470  
Office of the Attorney General  
7141 Cleanwater Drive SW  
P.O. Box 40124  
Olympia, WA 98504-0124  
(360) 586-6565  
Sarahc@atg.wa.gov  
Amberl1@atg.wa.gov  
JohnM5@atg.wa.gov  
NicholasW1@atg.wa.gov

*Attorneys for Defendants*

AMERICAN CIVIL LIBERTIES UNION OF  
WASHINGTON FOUNDATION  
901 FIFTH AVENUE #630  
SEATTLE, WA 98164  
(206) 624-2184

1 Seattle, Washington 98104  
2 (206) 447-3900  
3 anitak@defender.org

4 *Attorneys for Plaintiffs*

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Stip. and Prop. Order Certifying Class  
No. 14-cv-01178-MJP - 8

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WASHINGTON FOUNDATION  
901 FIFTH AVENUE #630  
SEATTLE, WA 98164  
(206) 624-2184



**CERTIFICATE OF SERVICE**

I hereby certify that on October 30, 2014, 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:

- John K McIlhenny (JohnM5@atg.wa.gov)
- Nicholas A Williamson (NicholasW1@atg.wa.gov)
- Sarah Jane Coats (sarahc@atg.wa.gov)
- Amber Lea Leaders (amberl1@atg.wa.gov)

DATED: October 30, 2014, at Seattle, Washington

*/s/ Sarah A. Dunne*

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Sarah A. Dunne, WSBA No. 34869  
Attorney for Plaintiffs