

The Honorable Marsha J. Pechman

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

A.B.; et al.	No. 14-cv-01178-MJP
Plaintiffs,	[PROPOSED]
vs.	ORDER CERTIFYING CLASS
Washington State Department of Social and Health Services; et al.,	
Defendants.	

ORDER

This matter came before the Court on Plaintiffs' motion under Fed. R. Civ. P. 23(c) for an order allowing this matter to proceed as a class action under Rules 23(a) and 23(b)(2). The Court, having considered the relevant evidence and pleadings filed in this action, finds:

1. A class action must satisfy the requirements of Fed. R. Civ. P. 23(a) and at least one of the requirements of Fed. R. Civ. P. 23(b). Rule 23(a) requires the Court to find that: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and

adequately protect the interests of the class. Fed.R.Civ.P. 23(a).

Plaintiffs here seek certification under Fed.R.Civ.P. 23(b)(2), which requires the Court to find that “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate resting the class as a whole.” Plaintiffs have met their burden and shown that all prerequisites for certification of the proposed class are met here.

1. **Numerosity**: The proposed class is so numerous that joinder of all members is impracticable. The size of the class is approximately 220 persons who have already waited longer than seven days to be transported for evaluation and/or restoration by Defendants, and may increase during the pendency of this action as more individuals are added to the waitlist.

2. **Common Questions of Law and Fact**: Each named Plaintiff and the Class assert that Defendants’ conduct violates their due process rights under the Fourteen Amendment of the U.S. Constitution, and should be enjoined. The Court finds sufficient common questions of fact and law to satisfy Rule 23(a)(2).

3. **Typicality**: each named Plaintiff asserts the claim that his or her confinement for longer than 7 days while awaiting transport for services ordered by the Court is unlawful. These claims are typical of those of the proposed Class. The court finds that typicality is satisfied. Fed. R. Civ. P. 23(a)(3).

4. **Adequacy**: the Court is satisfied that the named individuals and class counsel will represent the Class. Fed. R. Civ. P. 23(a)(4). Here, Disability Rights Washington and ACLU of Washington exist to represent the interests of those within the proposed class and have extensive experience in class action challenges and civil rights litigation, as do Class co-counsel Carney

Gillespie Isitt PLLP. Class Counsel Public Defender Association has had a longstanding interest in this issue and has expertise in criminal defense. The Court finds the class counsel to be adequate. The proposed class representatives and their attorneys will fairly and adequately protect the interests of the proposed class.

With respect to the named Plaintiffs, each has demonstrated, through next friends, their interest in prosecuting the instant complaint. Each Plaintiff has standing to assert the claims at issue. The Court finds that the named Plaintiffs are adequate to represent the Class.

5. **Certification under Fed. R. Civ. P. 23(b)(2):** Plaintiffs here seek injunctive and declaratory relief that, if granted, will apply equally to all members of the proposed Class. Defendants' actions here apply to those in the proposed class that have been confined or will be confined during delays in transport for services. The Court finds the requirements of Rule 23(b)(2) easily satisfied.

Based on the foregoing and the supporting documentation, it is hereby ordered that Plaintiffs' proposed class is certified, to consist of:

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 either be evaluated for competency or to receive competency restoration services; and (b) who have waited for court-ordered competency evaluation or restoration services for seven or more days from the date on which the court order was entered.

SO ORDERED this _____, 2014

Honorable Marsha J. Pechman
United States District Judge

DATE: October 3, 2014

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