

The Honorable Marsha J. Pechman

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

A.B., by and through her next friend Cassie Cordell Trueblood; D.D., by and through his next friend Andrea Crumpler; K.R. by and through his next friend Marilyn Roberts; Q.M. by and through his next friend Kathryn McCormick; all others similarly situated; and Disability Rights Washington;

Plaintiffs,

vs.

Washington State Department of Social and Health Services; Kevin Quigley, in his official capacity as Secretary of the Department of Social and Health Services; Western State Hospital; Ron Adler in his official capacity as Chief Executive Officer of Western State Hospital; Eastern State Hospital; and Dorothy Sawyer in her official capacity as Chief Executive Officer of Eastern State Hospital,

Defendants.

No. 14-cv-01178-MJP

**ORDER GRANTING TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION
(Proposed)**

CLASS ACTION

This matter having come before the Court upon the Motion for a Temporary Restraining Order and Preliminary Injunction, and having reviewed all of the files, documents, and briefs filed herein and heard all of the arguments of counsel, it is hereby ORDERED, ADJUDGED, and DECREED that pursuant to Fed. R. Civ. P. 65, the Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction is GRANTED for the following reasons:

1 “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on
2 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
3 balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v.*
4 *Natural Res. Def. Council*, 129 S. Ct. 365, 374 (2008).

5 At issue in the present case is whether people with mental conditions affecting their
6 ability to participate in criminal proceedings may be detained for weeks or months in local jails
7 while waiting for competency evaluation and restoration services. It is well established in the
8 Ninth Circuit that pre-trial detainees in need of competency evaluations or restorative services
9 have substantive due process rights under the Fourteenth Amendment, or liberty interests in
10 freedom from incarceration and in restorative services, and must not be required to suffer in jail
11 conditions for weeks or months before getting those services. *Oregon Advocacy Ctr. v. Mink*,
12 322 F.3d 1101 (9th Cir. 2003).

13 The uncontroverted facts regarding the extent of the delays in Defendants’ delivery of
14 competency evaluation and restoration services and the ample evidence of harm to the individual
15 named plaintiffs and Plaintiff DRW’s affected constituents who are members of the putative
16 class demonstrate that Defendant’s actions have led to people with mental conditions being
17 seriously and irreparably harmed while they wait in jails for weeks or even months to receive
18 court ordered evaluation and restoration services.

19 Therefore, the Court finds that Plaintiffs will likely succeed on the merits as delays of
20 weeks or months to receive competency evaluation and restoration services is unacceptable
21 under the Fourteenth Amendment’s protection of substantive due process and liberty. The
22 documents, briefs, testimony, and argument demonstrate to the Court that Plaintiffs are suffering
23 irreparable harm while they wait for excessive periods in jail. Additionally, the Court finds the

1 balance of equities tips sharply in Plaintiffs' favor since there is no "legitimate state interest in
 2 keeping mentally incapacitated criminal defendants locked up in county jails for weeks or
 3 months." *Mink*, 322 F.3d at 1121. In contrast, the state does have an interest in upholding the
 4 civil rights of its citizens. *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). Thus, this
 5 Order is in the public interest and it is imperative that Plaintiff's irreparable harm end as soon as
 6 possible. It is, therefore, further ORDERED and DECREED that:

- 7 1) Prolonged detention of people with mental conditions in need of competency
 8 evaluation and restoration services in jail prior to any adjudication of criminal
 9 guilt is unconstitutional, as it exceeded the time necessary for swift in-jail
 10 evaluation or transportation to the hospital for evaluation or restoration services;
- 11 2) Defendants are enjoined to immediately staff and use all existing space with
 12 hardened security at the hospitals for forensic services;
- 13 3) Defendants are enjoined to immediately transfer any civil patients on the forensic
 14 units and those patients found Not Guilty by Reason of Insanity who have a
 15 conditional release, partial conditional release, or have attained the highest level
 16 from the forensic units to standard, non-hardened, civil units, unless an individual
 17 showing is made to this court that a particular patient's needs cannot be met or
 18 they cannot safely be housed in any civil unit; and
- 19 4) Defendants are enjoined to immediately contract directly with all private
 20 evaluators identified by either defense counsel or prosecutors in each county, at
 21 each evaluator's regular rate, to conduct competency evaluations in addition to
 22 existing evaluators and those evaluators who can be pulled from outpatient
 23 evaluations to staff the additional inpatient units ordered above.

1 **IT IS SO ORDERED.**

2 Dated this _____ day of October, 2014.

3
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HON. MARSHA J. PECHMAN
UNITED STATES DISTRICT COURT

5 Presented by:

6 /s/David Carlson

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