

The Honorable Marsha J. Pechman

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**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

**DECLARATION OF
DARON MORRIS**

CLASS ACTION

I, Daron Morris, declare as follows:

1. I am over the age of eighteen, have personal knowledge of the matters stated herein, and am competent to testify thereto.

1 2. I am Felony Supervisor and Co-Deputy Director of The Defender
2 Association (TDA), one of four public defense agencies within the King County
3 Department of Public Defense.

4 3. Since November 2010, I have supervised approximately twenty (20)
5 felony attorneys in their case work by discussing case strategy, writing evaluations,
6 setting policy, and ensuring our policy and procedure standards are met.

7 4. I have observed delays in TDA's clients receiving court-ordered
8 competency evaluation or restoration services. I have taken an interest in the delays in
9 Western State Hospital's (WSH) competency evaluation and restoration services and
10 have become the office point person on these issues. Through my role as a supervisor
11 and as the office point person on these issues, I have been made aware of several cases
12 where clients experienced several long delays in getting court-ordered competency
13 evaluation or restoration services from WSH.
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15 5. While the length of the delays have gone up and down over time, TDA's
16 clients have continually been subjected to harm including solitary confinement and use
17 of discipline for behaviors caused by mental illness.
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19 6. In my role as a supervisor, I have fielded several phone calls from
20 individuals who had mentally decompensated who were obviously distressed,
21 untreated, and distrustful of their attorneys because they were confused why they had
22 not been sent to WSH as a court had ordered. The delays also caused break-downs in
23 attorney-client relationships because the delays were so inexcusable nothing could be
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1 said to justify them, yet attorneys were unable to obtain relief from the courts for their
2 clients.

3 7. The number of individuals waiting for court-ordered competency
4 evaluation or restoration services and the length of time they were waiting spiked in
5 the winter of 2011. In the course of discussions with WSH regarding delays, TDA
6 started receiving data from Dr. Brian Waiblinger, Medical Director, WSH, showing
7 wait times that far exceeded seven days. The wait list on 12/13/11 reached 128 people
8 on the waitlist. At that time, the longest time a misdemeanant waited for restoration
9 was 136 days. Attached as Exhibit A is a true and correct copy of the 5/29/2012 WSH
10 waitlist report.
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13 8. During the fall and winter of 2011, I began contacting various
14 representatives of public defender agencies, Disability Rights Washington, and other
15 stakeholders regarding these problems. We considered bringing litigation and wrote a
16 joint letter to Sarah Coats, the section chief of the Mental Health Division at Attorney
17 General's Office. Attached as Exhibit B is a true and correct copy of the Joint Letter.
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19 9. At that time, WSH had a backlog reduction plan and stated that they
20 would have the list significantly reduced in six months. Attached as Exhibit C is a true
21 and correct copy of WSH's Forensic Model Description. They offered data on how to
22 achieve that goal. Attached as Exhibit D is a true and correct copy of WSH's Forensic
23 Model. It was my understanding that they were committed to resolving this issue, and
24 we started receiving waitlist numbers from Dr. Waiblinger every two weeks.
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7 10. These updates continued until the fall of 2012 when the numbers and
2 length of time people were waiting in jail for evaluation and restoration plateaued. I
3 stopped receiving waitlist data from Dr. Waiblinger in 2012.

4 11. According to the last set of data I received, the average number of people
5 waiting was approximately 30 and the delays of several weeks to months continued to
6 persist. Attached as Exhibit E is a true and correct copy of WSH's 10/18/12 Waitlist
7 Report.
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9 12. After talking with people involved, including WSH staff, I am aware that
10 this problem is not only persistent but stems from inadequate resources for clinicians to
11 be hired and retained by WSH on a consistent basis.
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13 13. As WSH was making some progress at reducing the waitlist, we moved
14 away from our litigation strategy and began working collaboratively with both WSH
15 and the legislature to see if lawmakers could fix the issue.
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17 14. In 2012, along with King County Superior Court Judges Kessler and
18 Finkle, King County jail staff, law enforcement officers, mental health providers, and
19 disability and civil rights advocates, I testified in support of Senate Bill 6492, which was
20 intended to address the delays in court-ordered competency evaluation and
21 restoration services by establishing a seven-day target for incarcerated individuals to
22 receive such services.
23

24 15. When Senate Bill 6492 was enacted, I remained concerned that the targets
25 to provide competency evaluation and restoration services were aspirational rather
26 than mandatory deadlines.

1 16. These concerns were amplified when I reviewed the JLARC reports
2 stating that WSH has failed to meet these deadlines. Attached as Exhibit F and G are
3 true and correct copy of WSH's JLARC reports. Further, JLARC found that WSH failed
4 to track and report accurate data, analysis, and its own processes to permit legislative
5 engagement in improving this broken system. *Id.* I remained hopeful that JLARC
6 pressure would bring about an effective response.
7

8 17. In 2013, the legislature responded again to WSH's failure to comply with
9 the seven-day deadline, by passing Senate Bill 5551. This bill allows counties to obtain
10 an outside evaluation when certain conditions were met. DSHS limited the
11 reimbursement for outside mental health evaluations to \$800. Attached as Exhibit H is
12 a true and correct copy of a letter from DSHS limiting reimbursement to \$800. The
13 prevailing rate for an outside evaluator is typically between \$200 and \$300 per hour.
14 The reimbursement was clearly inadequate because evaluators need more than three to
15 four hours to evaluate a defendant.
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18 18. As a result of observing lengthy delays in TDA's clients receiving court-
19 ordered competency evaluation or restoration services, from January 2013 to the
20 present, I began encouraging my attorneys to file contempt motions on behalf of clients
21 for the delays. Defenders were not successful in these motions. One presiding judge
22 commented that he felt WSH would respond by simply moving the individual up on
23 the waitlist in the order to avoid being held in contempt, but without an effect on the
24 systemic problem.
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7 19. Moreover, the issue could be easily mooted because often the public
2 defender was not able to realize the problem and develop the issue by the time the
3 defendant ultimately got transported to WSH.

4 20. More recently, this month, a judge ordered the immediate transport of
5 one of my clients. Western State Hospital failed to comply with that order. That client
6 remains in King County Jail.

8 21. While it is difficult to watch anyone sit in jail without appropriate mental
9 health treatment and no progress being made in their case, it is particularly
10 heartbreaking to watch people with low-level offenses be held in jail in excess of a year
11 when their maximum sentences, if they were convicted, would be lower than the time
12 spent waiting for admission to WSH.

14 22. The criminal defense attorney community has been committed to
15 resolving this issue whether it be through collaboration with WSH or by supporting
16 legislative solutions. However, these efforts have remained largely ineffective.
17 Positive change can only come through the now action pending in front of this court.

19 I declare under penalty of perjury under 28 U.S.C. § 1746, that the forgoing is
20 true and accurate.

21 DATED this 30th day of September, 2014, at Seattle, Washington.



24 Daron Morris

CERTIFICATE OF SERVICE

I hereby certify that on October 3, 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 3, 2014, at Seattle, Washington.

/s/Mona Rennie

Legal Assistant
Disability Rights Washington