



June 1, 2015

VIA ELECTRONIC MAIL

Governor Jay Inslee
Office of the Governor
P.O. Box 40002
Olympia, WA 98504-0002

Re: Partial Veto of SB 5177

Dear Governor Inslee:

The American Civil Liberties Union of Washington (ACLU) urges you to partially veto Senate Bill 5177, concerning forensic mental health services.

While some sections of SB 5177 will help the state provide competency evaluations and restoration services in a timelier manner, parts of other sections—specifically those parts that authorize the use of jails for competency restoration services (sections 5, 6, 14, 15, 16, and 18)—are problematic. Jails are designed for incarceration and punishment. They are not designed for therapy and recovery from mental illness and cannot be converted for that purpose. For that reason we request a veto of the sections set forth above, even though some features in those sections contain positive steps forward. This is because we believe that allowing in-jail restoration will undermine the other proposed community restoration programs allowed for in these same sections. **Further, there is still time to include non-jail based community restoration and other positive steps that are in SB 5177 in separate legislation during the current special session, and we urge you to work with the legislature to do so. But those positive steps should not be tied to the damaging policy change that will allow competency restoration to be provided in jails.**

As a federal court made clear in its ruling against the state in *Trueblood v. DSHS*, “jails are not hospitals, they are not designed as therapeutic environments, and they are not equipped to manage mental illness or keep those with mental illness from being victimized by the general population of inmates.”¹ In an earlier ruling, the same court stated that “jails are punitive environments by definition, and the conditions of confinement undermine the mental health of detainees as well as

¹ *Trueblood v. DSHS*, United States District Court – Western District of Washington, April 2, 2015, available at <https://aclu-wa.org/sites/default/files/attachments/2015-04-02--Dkt%20131--Final%20FOF%20and%20CL.pdf>.

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the state's interests in competency restoration and trial."² Similarly, a report commissioned by DSHS itself in 2014 concluded that "jail-based competency restoration is not a viable option for Washington at this time."³

Jail-based competency restoration will also be expensive and makes no sense in the context of our state's severe budget shortfall. A 2013 study, examining other states' systems, found that state-run psychiatric hospitals have a much higher competency restoration rate (75%) than jail based restoration programs (45%).⁴ The state should not be spending scarce resources converting jail space to masquerade as a therapeutic environment when those dollars can be spent on the much more viable and legitimate project of providing those services through community mental health providers and the state hospitals.

The legality of in-jail restoration is also disputed. Since jails are inherently non-therapeutic environments, advocates will use all avenues available to ensure that the constitutional rights of individuals in need of competency restoration services are being upheld.

Instead of investing in legally questionable practices, the state should focus on the more appropriate policy changes elsewhere in 5177, and, to the extent that those are contained in sections requested to be vetoed here, to re-enact them during special session in their own legislation. For example, the provisions in the bill (sections 1, 2, 3, and 12) that direct DSHS to work with counties, courts, prosecutors, defenders, and jails to better facilitate timely competency evaluations, screening processes, and record sharing reflect a reasonable approach. Other pragmatic provisions in the bill include the continuing use of reimbursement for counties to conduct their own competency evaluations (section 7) and authorizing prosecutors to divert cases to community based services (section 9). Further, authorizing community-based restoration programs, but not jail-based restoration programs, will allow the State to more timely provide competency restoration services. As we have consistently pointed out to legislators, the ultimate solution to Washington's ongoing problems in delivering adequate services to people in mental health crisis is to fund community based solutions, such as those described above. The band-aid approach of using jails for therapeutic services has no place in that scheme.

No matter how much rationalization is offered for a jail-based approach to competency restoration, jails are simply not therapeutic environments. A federal

² *AB. v. DSHS, et al.*, Order Granting Plaintiffs' Motion for Summary Judgment, December 22, 2014, available at <https://aclu-wa.org/sites/default/files/attachments/2014-12-22--Dkt%20104--Ord.%20Granting%20Pls.%27%20Mot.%20for%20Summ.%20J..pdf>

³ Groundswell Services, Inc., *Forensic Mental Health Consultant Review Final Report* at p. 37, Prepared for the State of Washington's Department of Social and Health Services in response to contract # 1334—91698, June 30, 2014, available at <https://aclu-wa.org/sites/default/files/attachments/Groundswell%20Rep..pdf>

⁴ Hogg Foundation for Mental Health, *Restoration of Competency to Stand Trial*, March 2013, available at <http://www.hogg.utexas.edu/uploads/documents/Competency%20Restoration%20Brief.pdf>

court has concluded that “unlike the state psychiatric hospitals, jails cannot provide the environment or type of care required by” individuals in need of forensic mental health services.⁵ Washington should not move down this dangerous path of codifying the treatment of individuals with mental illness in jails. Please veto sections 5, 6, 14, 15, 16, and 18 of SB 5177, and work with the legislature to re-enact the positive solutions in those sections into separate legislation that does not allow jail-based restoration.

Sincerely,

A handwritten signature in black ink that reads "Kathleen Taylor". The signature is written in a cursive, flowing style.

Kathleen Taylor
Executive Director

⁵ See note 1