

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

DEMONTRAY HUNTER, by and through his next friend, Rena Hunter; RUSSELL D. SENN, by and through his next friend, Irene Senn; TRAVIS S. PARKS, by and through his next friend, Catherine Young; VANDARIUS S. DARNELL, by and through his next friend, Bambi Darnell; FRANK WHITE, JR., by and through his next friend, Linda White; MARCUS JACKSON, by and through his next friend Michael P. Hanle; TIMOTHY D. MOUNT, by and through his next friend, Dorothy Sullivan; HENRY P. MCGHEE, by and through his next friend, Barbara Hardy, individually and on behalf of all others similarly situated; and the ALABAMA DISABILITIES ADVOCACY PROGRAM,

Plaintiffs,

v.

LYNN T. BESHEAR, in her official capacity as  
Commissioner of the Alabama Department of  
Mental Health,

Defendant.

CASE NO. 2:16-cv-00798-MHT-CSC

CLASS ACTION FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF

**JOINT PLAN TO REMEDIATE DEFENDANT'S  
NONCOMPLIANCE WITH CONSENT DECREE**

**I. INTRODUCTION**

1. On January 25, 2019, the parties submitted a Joint Status Report (ECF No. 116) detailing the extent and nature of the Defendant's noncompliance with the Consent Decree (ECF No. 94). On February 13, 2019, the parties had a telephone conference with Judge Thompson, wherein the status of the Defendant's noncompliance was discussed, and it was suggested by the Court that the parties attempt to remediate noncompliance in lieu of filing for contempt (ECF Nos.

119, 120). The parties filed a further Joint Status Report on April 1, 2019 (ECF No. 122), and subsequently submitted a proposed order on the status of noncompliance (ECF No. 124), which provided for the engagement of a compliance consultant and the development of a remedial plan thereafter. The Court adopted the joint proposed order on April 12, 2019 (ECF No. 125).

2. The Consultant prepared two reports, dated July 16, 2019 and July 31, 2019. In the first report, the Consultant identified many barriers to compliance. In the second report, the Consultant proposed various evidence-based recommendations to correct deficiencies identified by the Consultant, and to eliminate barriers to compliance.

3. The Court ordered Defendant to prepare a remedial plan for Plaintiffs, and that plan was submitted on August 21, 2019. Plaintiffs reviewed that plan and determined that Defendant had made a good faith attempt to formulate a plan reasonably designed which, if implemented could lead to compliance. However, the plan lacked certain particularized details, lacked some crucial requirements, and was sufficiently vague in some instances such that plaintiffs could not accept the same.

4. The Parties requested, and the Court approved, an extension to allow the parties to explore the possibility of submitting a joint remediation plan. The parties have negotiated in good faith, and now present the following plan which the parties believe provides Defendant a viable path to reach compliance.

## **II. JOINT PLAN**

### **A. OFFICE OF FORENSIC MENTAL HEALTH SERVICES (“OFMHS”)**

#### **i. Hiring and Duties of the Director of the OFMHS**

1. On or before January 1, 2020, ADMH shall create the Office of Forensic Mental Health Services (“OFMHS”).

a. The OFMHS shall be led by an individual (hereafter Director) who directly reports to the Associate Commissioner for Mental Health and Substance Abuse (“ACMH”).

i. Any person appointed to this position shall possess the following general attributes:

1. Education and practical experience in a leadership position involving the provision of mental health care and the interaction of such care with the judicial system.

2. The minimum educational requirement shall be a Masters-level degree and five (5) years’ relevant experience, or a M.D., D.O, Ph.D., or J.D. and four (4) years’ relevant experience and the announcement will be consistent with the Mental Health exempt classification and pay structure.

b. The OFMHS shall additionally be staffed by personnel who support the needs of the office. At a minimum, the initial staff shall consist of:

i. Data Analyst(s): one or more individuals assigned to collect, gather, store, and analyze data covering at least the following topics contained in the “Duties of the Director of OFMHS” section below, as described in paragraphs 4, 5, 6, 8, 10, and 11 below. The Data Analyst Department will also collect, gather, store, and analyze the following data:

1. A list, provided at the end of every month, of each individual admitted into Taylor Hardin and/or Hillcrest and/or Bryce and/or other facilities as contemplated in Section B(i)(3) of this plan, with the following information clearly delineated:

- a. The specific reason for that individual's admission (inpatient eval or CRT)
  - b. The date that the individual was ordered to Taylor Hardin/Hillcrest/Bryce
  - c. The date that the individual was actually admitted to Taylor Hardin/Hillcrest/Bryce
2. Notification, as outlined in the Consent Decree, of each and every individual who receives services outside of the date-of-receipt order specified in the Consent Decree, to contain the specific reason for the skip (must be a "compelling obstacle" to providing that person with services when they reach the front of the line, as specified in the Consent Decree). Such notification must be provided with the monthly monitoring data.
  - a. If ADMH does not freely provide same, then ADAP, in its role as Monitor, reserves the right to request the above information for each individual receiving services outside of the date-of-receipt order specified in the Consent Decree.
  - b. If ADMH continues to provide services out of order without providing the above-described notice to ADAP for each and every individual who receives services outside of the date-of-receipt order specified

in the Consent Decree, then ADAP, in its role as class counsel, reserves the right to address this ongoing issue in accordance with the procedures laid out in Section VIII of the Consent Decree and/or meet and confer.

3. A list, provided at the end of every quarter, of any education completed in accordance with the Consent Decree. Materials used for any seminars, trainings, conferences, or other educational outreach related to Hunter should be provided along with the list.
4. A list, provided at the end of every month, of the class member census at Taylor Hardin/Hillcrest/Bryce or any other facility describe in Paragraph B (3), clearly delineating the following information:
  - a. The date of each individual class member's admission into Taylor Hardin/Hillcrest/Bryce or any other facility described in paragraph B (3)
  - b. Each individual class member's legal status
5. Notification, as outlined in the Consent Decree, of each and every class member who is referred for treatment under the Emergency Treatment Protocol. Such notice should be provided within the timeframes specified by the Consent Decree, and should include the following information:

- a. The name and location of the individual being referred (to be provided within 48 hours of ADMH's receipt of notice of same)
- b. Notification of the clinical professional's determination whether the individual needs emergency treatment (to be provided within 48 hours of the clinical professional's visit with the individual)
- c. If the individual is determined to be suicidal, then notice of same (to be provided within 24 hours of ADMH's receipt of notice of same, or by the close of business the following Monday, if ADMH receives notice on a Saturday or Sunday).

ii. Peer Reviewer: One or more individuals assigned to provide CFE training and ongoing continued education. Defendant agrees to transmit to Plaintiffs, within 30 days of the approval of this plan, proof that an education plan in CFE training is provided and ongoing.

2. The Director of the OFMHS shall have the following duties and responsibilities:
- a. Operational control of all forensic evaluation services in the facilities through facility staff.
  - b. Responsibility for overseeing the training of forensic evaluators;
  - c. Responsibility for overseeing a certification process for forensic evaluators in addition to any specific required statutory or regulatory requirements;

d. Oversee the liaisons to jails and other local correctional facilities to ensure the proper flow of information to/from the jails to/from ADMH for the purposes of streamlining admissions, ensuring continuity of care, as well as coordination of logistical issues such as transportation, and adequate and appropriate space for evaluations;

i. Defendant agrees to develop a plan for ongoing assessment of needed resources to ensure compliance with the terms of the Consent Decree.

e. Oversee the liaisons to relevant state courts and relevant state court personnel to increase efficiency of forensic evaluation systems to avoid delays due to problems such as missing, incomplete, or ambiguous orders, gathering of necessary records, expediting competency hearings, and problem solving complex emergency admissions;

i. Defendant agrees to transmit to Plaintiffs, within 30 days of the approval of this plan, as new policies are created, the internal policies and procedures applicable to this process, as well as a written directive for moving this responsibility under forensic control.

f. Coordination of forensic services for class members treated in hospitals inside of the direct continuum of care of ADMH, geared particularly towards the individualized needs of patients under the unique circumstances of their legal status;

g. Oversight of the forensic data collection and analysis systems, as well as dissemination of important data points or trends to allow ADMH to better plan for the future;

h. Communication and coordination around continued development, and implementation of community based forensic services and programs;

i. Communication and coordination around continued development with other ADMH staff, and community mental health providers, to aid in the integration of forensic services with the larger mental health systems;

j. Coordination of alternative forensic services for class members with significant cognitive impairments;

k. Evaluation of need for additional personnel in the OFMHS;

l. Serve as part of the team created by ADMH to assess the need for additional mental health personnel, beds, and additional resources as necessary to ensure compliance with the terms of the Consent Decree;

m. Perform additional duties and responsibilities as from time to time are necessary to effectuate the requirements of a working system-wide forensic care system.

3. The Director of the OFMHS shall begin immediately to implement the systems, training, and oversight upon appointment. Since the required elements are so expansive, the parties acknowledge that ADMH cannot implement every system immediately. The Director shall prioritize those tasks which are deemed most crucial and most directly impact the current barriers to compliance with the Consent Decree. The Director will use his/her best efforts to implement all elements of the required duties within nine (9) months of the effective date of the Plan. Plaintiffs reserve the right to file appropriate notices, under Section VIII of the final Consent Decree, if Plaintiffs believe that ADMH is not making sufficient progress in addressing critical goals within the nine (9) month period.

ii. Duties of Staff Assigned to Data Collection in OFMHS

1. Within 120 days of the effective date of this plan, sufficient staff shall be assigned to the OFMHS to collect, store and analyze, at a minimum, the following types of data:



a. Relevant data concerning the wait list of class members awaiting a forensic evaluation, including their location, date of request, type of evaluation requested, any outstanding documents necessary for admission or evaluation;

i. The above data will be collected via  
spreadsheets attached as Exhibits A, B, and  
C.

b. Relevant data concerning the following lengths of time for class members:

i. Time class members spend awaiting completion of reports;

ii. Period of placement at Taylor Hardin Secure Medical Facility (“THSMF”), Bryce Hospital, or other private contracted hospitals, for competency evaluation;

c. Other relevant data as identified by the Director.

iii. Annual Evaluation of Staffing Needs for the OFMHS

1. At least annually the Associate Commissioner of MHSA shall analyze and assess the need to add additional staff to the OFMHS.

2. Not later than 30 days after the analysis, the Associate Commissioner of MHSA, in writing, shall prepare a request for additional staff (if appropriate), identifying the exact personnel needed.

**B. MENTAL HEALTH STAFFING**

ADMH acknowledges that a lack of psychologist staffing impacts treatment and required assessments which, in turn, adversely impacts length of stay and quality of care because of a lack of adequate staff to prepare necessary evaluations of risk and competency and because actual care necessary for competency restoration is negatively impacted. ADMH also has significant vacancies in psychiatrists, nursing, psychologists, and forensic technicians.

i. Immediate Actions

ADMH shall implement immediately the following actions:

1. ADMH shall increase compensation for psychiatrists by 10%, to take effect on or before October 16, 2019. ADMH shall reallocate each current Psychologist at its mental illness facilities to the next level classification effective October 16, 2019, or the date in which the incumbent can meet the minimum qualifications of the new classification. ADMH shall explore the need for an increase in compensation for direct care staff vacancies at THSMF/Bryce;

2. ADMH shall pursue a collaborative agreement between ADMH and the University of Alabama, Department of Psychology, to access an increased group of student trainees who may assist clinicians, where appropriate as a short term stopgap measure;

3. ADMH or its designee shall investigate access to additional licensed and certified hospital beds in an inpatient hospital or hospital-like setting. These beds may be provided through a contract between ADMH and a third-party provider, such as a Community Mental Health Center or designated Mental Health Center as provided by Ala. Code §§15-16-61(5), 22-51-1, et seq., 22-56-5 and 22-2-90(1), and/or other JCO or CMS accredited facilities willing to house, assess, and treat class members.

4. ADMH or its designee shall investigate and hire qualified forensic evaluators to perform outpatient evaluations for competency;

iv. Appropriate Use of Students

1. ADMH may use qualified students to supplement permanent staff. The purpose is to provide a training opportunity for qualified students, and to allow a short-term way for THSMF to supplement staff in positions which are currently vacant. ADMH may not use students as a permanent solution to lack of appropriate staff.

2. THSMF will adhere to existing internal policies regarding the use of students to supplement permanent staff.

3. Defendant agrees to transmit to Plaintiffs, within 30 days of the approval of this plan, the internal policies and procedures applicable to the use of students to supplement permanent staff.

**C. ALTERNATIVES TO PLACEMENT AT THSMF**

i. Immediate

1. ADMH shall implement the OCRP program in Jefferson County contemplated in their proposed plan, for low level offenders with low risk factors. ADMH shall use best efforts to persuade the relevant state court(s) to not unduly limit access to the program for patients based on index crime, or risk of dangerousness, as the Circuit Court allows. ADMH shall provide Plaintiff's counsel any objective criteria utilized by the referring clinical staff, or the court, in referring and approving placement. During the period of Court Supervision, ADMH shall report quarterly on the number of referrals, and results of such referrals and plaintiffs' counsel. The OCRP program should be functional in Jefferson County by six months following the date of this agreement.

ii. Six Months

1. ADMH shall explore the possibility of expanding the Jefferson County OCRP to additional counties. Class counsel recommends that ADMH explore expanding to counties within other large metropolitan areas, such as Montgomery, Mobile, and Huntsville. ADMH shall provide quarterly information on the status of attempts to expand the program to the Court and Plaintiffs' counsel.

2. ADMH shall initiate a study of alternate placement of class members sent for restoration services who, based on cognitive deficits (e.g., a diagnosis of intellectual disability), are unlikely to be restored to competency.

iii. One Year

1. ADMH shall have located appropriate alternate placements of class members sent for restoration services who, based on cognitive deficits (e.g., a diagnosis of intellectual disability), are unlikely to be restored to competency, and should be referring all such patients to those alternative placements.

**D. EDUCATION OF STAKEHOLDERS**

1. ADMH has already completed training under the Consent Decree and is in substantial compliance. Training programs are already in the hands of relevant state court Judges and slide shows have been presented. Although, ADMH shall continue in good faith in the scheduling of continuing education.

2. ADMH shall continue in good faith in the scheduling of continuing education.

**E. ACCESS TO ADMH LEGAL STAFF FOR STEP DOWNS IN COMMUNITY**

1. Upon a request by a Community Mental Health Center that the Center currently houses a patient placed in their custody by a state Court under Criminal Rule 11 who no longer needs the level of care currently provided, but could be safely housed in a less restrictive setting, ADMH may make available an attorney to petition the relevant state court of appropriate jurisdiction for a Modification of Conditions to allow the patient to be housed in a less restrictive environment.

**F. EXTENSION OF COURT SUPERVISION AND MONITORING**

1. In light of the fact that many of the provisions of this plan are expected to occur at such a point that the efficacy of the changes cannot be assessed within the current time parameters of the Consent Decree, the parties jointly request that Court Supervision and Monitoring be extended at this time by a period of one (1) year, until January 28, 2022. The amended Monitoring schedule will be as follows:

i. Monitoring Periods:

1. February 1, 2021 – April 30, 2021 (report due May 7, 2021)
2. May 1, 2021 – July 31, 2021 (report due August 6, 2021)
3. August 1, 2021 – October 31, 2021 (report due November 5, 2021)
4. November 1, 2021 – January 28, 2022 (final report due February 4, 2022)

2. Class counsel reserves the right to petition the Court to extend Monitoring and Court Supervision beyond the above dates if full compliance is not attained by January 28, 2022, and Defendant may ask for release earlier if in full compliance. The proposed amendments to the Monitoring schedule do not change any other Monitoring-related deadlines currently in effect.

3. During the additional year, ADMH agrees to pay ADAP, as Monitor, the sum of \$48,000, at a rate of \$195.00 per hour for actual time expended.

**G. PAYMENT OF ATTORNEY'S FEES**

The parties have endeavored to create a joint plan to correct ADMH's self-admitted failures to comply with the Consent Decree in this case. In negotiating a joint plan, the parties have avoided the more costly need to litigate this matter, and spared precious judicial resources. ADMH agrees

to pay counsel for the plaintiffs \$195 per hour with a cap of \$40,000 in full satisfaction of services performed in litigating ADMH's non-compliance with the terms of the Consent Decree up to the date of the approval of this agreement. ADMH shall pay such sum within one hundred eighty (180) days of the effective date of this plan.

Dated: October 31, 2019

Respectfully submitted,

/s/ William Van Der Pol, Jr.

William Van Der Pol, Jr. (ASB-2112-114F)  
Shandra N. Monterastelli (ASB-1016-N00Q)  
Lonnie J. Williams (ASB-2866-I35W)  
ALABAMA DISABILITIES ADVOCACY PROGRAM  
500 Martha Parham West  
Box 870395  
Tuscaloosa, AL 35487-0395  
Telephone: (205) 348-4928  
Facsimile: (205) 348-3909  
Email: wvanderpoljr@adap.ua.edu  
smonterastelli@adap.ua.edu  
lwilliams@adap.ua.edu

Attorneys for Plaintiffs Demontray Hunter, Russell D. Senn, and Travis S. Parks, Vandarius S. Darnell, Frank White, Jr.,  
Marcus Jackson, Timothy D. Mount, and Henry P. McGhee  
and Plaintiff Alabama Disabilities Advocacy Program

Henry F. (Hank) Sherrod III (ASB-1200-D63H)  
HENRY F. SHERROD III, P.C.  
119 South Court Street  
Florence, AL 35630  
Telephone: (256) 764-4141  
Facsimile: (877) 864-0802  
Email: hank@alcivilrights.com

Randall C. Marshall (ASB-3023-A56M)  
ACLU OF ALABAMA FOUNDATION  
P.O. Box 6179  
Montgomery, AL 36106-0179  
Telephone: (334) 420-1741

Facsimile: (334) 269-5666  
rmarshall@aclualabama.org

Attorneys for Plaintiffs Demontray Hunter, Russell D. Senn, and Travis S. Parks, Vandarius S. Darnell, Frank White, Jr.,  
Marcus Jackson, Timothy D. Mount, and Henry P. McGhee

/s/ Thomas B. Kliner

Thomas B. Kliner  
Edward C. Hixon  
Ashley L. Nichols  
Nancy S. Jones  
ALABAMA DEPARTMENT OF MENTAL HEALTH  
RSA Union Building  
100 North Union Street  
Montgomery, Alabama 36104  
Tommy.Kliner@mh.alabama.gov  
Eddie.Hixon@mh.alabama.gov  
Ashley.Nichols@mh.alabama.gov  
Nancy.Jones@mh.alabma.gov

Attorneys for Defendant Lynn T. Beshear

### **CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I have caused a true and correct copy of the foregoing to be served on the counsel of record listed below by filing same with the Clerk of Court via the CM/ECF system this 31th day of October, 2019.

/s/William Van Der Pol, Jr.

Shandra N. Monterastelli  
Lonnie J. Williams  
Alabama Disabilities Advocacy Program  
500 Martha Parham West  
Box 870395  
Tuscaloosa, AL 35487-0395  
wvanderpoljr@adap.ua.edu  
smonterastelli@adap.ua.edu  
lwilliams@adap.ua.edu

Thomas B. Kliner  
Edward C. Hixon

Ashley L. Nichols  
Nancy S. Jones  
Alabama Department of Mental Health  
RSA Union Building  
100 North Union Street  
Montgomery, Alabama 36104  
Tommy.Klinner@mh.alabama.gov  
Eddie.Hixon@mh.alabama.gov  
Ashley.Nichols@mh.alabama.gov  
Nancy.Jones@mh.alabma.gov

Henry F. (Hank) Sherrod III  
Henry F. Sherrod III, P.C.  
119 South Court Street  
Florence, AL 35630  
hank@alcivilrights.com

Randall C. Marshall  
ACLU of Alabama Foundation  
P.O. Box 6179  
Montgomery, AL 36106-0179  
rmarshall@aclualabama.org

/s/ William Van Der Pol, Jr.  
William Van Der Pol, Jr. (ASB-2112-114F)  
Counsel for Plaintiffs



## Exhibit A - Sample Out-Patient Eval. List

A	B	C	D	E	F	G	H	I	J
1	Name of individual	Date of order	Date order received **Waitlists should continue to be organized by date of order receipt	Location (include name of jail or prison where applicable)	Type of outpatient eval	Eval completed	Eval sent to court	Wait days	If eval was provided out of order, reason why
2	Position on waitlist								

## Exhibit B - Sample CRT List

A	B	C	D	E	F	G	H
	Name of individual	Date of order	Date order received	Date of admission to facility	Location before admission (include name of jail or prison where applicable)	Wait days	If admission was provided out of order, reason why
1							
2	Position on waitlist			**Waitlists should be organized by date of admission			

## Exhibit C - Sample Inpatient Eval. List

	A	B	C	D	E	F	G	H	I	J	K
1		Name of individual	Date of order	Date order received	Date of admission to facility	Location (include name of jail or prison where applicable)	Type of outpatient eval	Eval completed	Eval sent to court	Wait days	If eval was provided out of order, reason why
2	Position on waitlist				**Waitlists should be organized by date of admission						