

***Trueblood, et al., v. Washington State Department of Social and Health
Services, et al.***
Case No. C14-1178 MJP
DEFENDANTS' PROPOSED PLAN

February 1, 2017

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I. INTRODUCTION

The Department of Social and Health Services (DSHS) submits this proposal in accordance with the January 24, 2017 order to present a plan to describe how DSHS would:

1. Admit class members to receive competency evaluation and restoration treatment services (hereafter referred to as “inpatient competency services”) within seven days of signing of a court order; and
2. Provide in-custody evaluation services within 14 days of the signing of a court order.

DSHS engaged the hospital Chief Executive Officers (CEOs) and other staff in capital facilities, budget and operations; consulted the Court Monitor; and reviewed the proposal submitted by Plaintiffs on January 30, 2017 to formulate this proposal. DSHS’s proposal includes three key components:

1. Increase evaluation capacity
2. Expand bed capacity for inpatient competency services
3. Continue to Implement and Improve Triage and Diversion

Finally, DSHS responds to the proposals made by Plaintiffs on January 30, 2017 that are not otherwise addressed as part of DSHS’s own plan (See Dkt. # 358).

II. COMPONENT 1: INCREASE COMPETENCY EVALUATION CAPACITY

1. The Office of Forensic Mental Health Services (OFMHS) has made further progress on recruitment actions identified during status hearing testimony in January 2017. Dr. Kinlen extended an offer on January 27, 2017 for the Western State Hospital (WSH) scheduler/assistant position. The offer was accepted and the new employee will start on February 16, 2017. Dr. Kinlen also extended an offer on January 30, 2017 for the WSH jail-based evaluator supervisor position. This offer was accepted and the new supervisor will start on April 3, 2017. Two other offers were extended for the remaining forensic evaluator supervisor positions and decisions are pending at this time.
2. Ingrid Lewis with OFMHS will reach out to counties by February 10, 2017 to remind them of the opportunity to engage panel evaluators to conduct more timely evaluations at DSHS expense in accordance with state law. Ms. Lewis will begin this outreach to encourage use of panel evaluators in the regularly scheduled meeting with King County Stakeholders scheduled for February 1, 2017. Outreach to remaining counties will include targeted communications to counties where DSHS is not meeting the 14-Day timeline. Ms. Lewis will email a memo to the Washington Association of Counties, Administrative Office of the Courts, Washington Defense Association, and Washington Association of Prosecuting Attorneys, as well as all county commissioners in counties eligible for 5551 reimbursement.

3. OFMHS staff conducted an Internet search for a Locums Tenens company to provide contracted Forensic Evaluations. Staff did not identify a company that provided qualified examiners for competency to stand trial. Therefore, DSHS will issue a Request for Information (RFI) by February 10, 2017 to solicit potential providers of contracted Forensic Evaluators (which may include psychologists or other suitably qualified professionals) to reduce the current backlog of orders.
4. DSHS respectfully proposes the Court consider a systemic investment of \$3.2 million from the fines being accrued to fund increased capacity to meet evaluation timeliness standards. DSHS would use this funding to hire 12 additional evaluators to yield an additional 144 evaluations per month. Based on the data analysis conducted by DSHS (see Attachment A), 12 evaluators for jail-based services would cover any current backlog of cases. This resource investment would also be sufficient to manage future spikes up to 25% higher than the most currently experienced peak in referrals (up to 386 referrals in a month's time). These evaluators would be responsible for completing any backlog cases, managing any increase in referrals throughout the state for in-custody evaluations, and providing evaluations at off-hour times. Seven of the positions would be out-stationed in locations with enough demand to support an out-station site while the remaining five would be stationed at WSH. Additionally, five forensic evaluator support positions would expedite patient access to care functions--such as scheduling, transcription, and treatment--while evaluator resources are focused on conducting evaluations. In anticipation of an approval of this action, DSHS issued a recruitment posting on January 30, 2017 to expedite the process.

Assuming current demand and recent peak referral experience, these actions are expected to eliminate backlog and achieve ongoing compliance once all actions are completed and resources are operational.

III. COMPONENT 2: EXPAND BED CAPACITY FOR INPATIENT COMPETENCY SERVICES

Following review of past recommendations from Dr. Mauch, Court Monitor as well as additional suggestions provided by her during a telephone call on January 27, 2017, DSHS proposes the following components for expansion of bed capacity to serve class members. DSHS respectfully proposes the Court consider a systemic investment of \$600,000 dollars from the fines being accrued to fund the design effort to remodel Building 10 at the Washington Veterans Home in Retsil, the details of which are included in item 2d below.

To meet current and future capacity for inpatient competency services DSHS will:

1. **Create short-term strategies to increase bed capacity to serve class members**
 - a. Dr. Kinlen evaluated a proposal by Eastern State Hospitals which Dr. Strandquist spoke about during his testimony at the January status hearing. Analysis of this proposal, which would refurbish a ward for civilly committed former forensic patients would not create significant increases in bed capacity to serve class members. However, in the fall of 2016 DSHS funded the creation of 8 new forensic beds at Eastern State Hospital to directly serve patients from WSH thus freeing up bed capacity to serve class members at WSH without increasing census. Three beds at WSH were vacated by NGRI patients and will be used for competency services beginning January 31, 2017. The remaining five beds at ESH will be made available for inpatient competency services in February 2017.
 - b. Extend the alternate facilities
Contracts for the existing 24 beds at Yakima and 30 beds at Maple Lane will be extended until June 30, 2018.
 - c. Expand 24 beds at Yakima
DSHS will consult the Court Monitor and provide all planning documents to her for review.
2. **Create long-term strategies to increase bed capacity to serve class members**
 - a. During a January 27, 2017 phone call, Dr. Mauch recommended considering contracting with Evaluation and Treatment (E & T) Centers to provide restoration treatment services. Revised Code of Washington 71.05.020 defines and E & T as “any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is certified as such by the Department.” Dr. Kinlen will work with the Attorney General’s Office to explore the legal authority of E & T’s to provide competency services under the forensic commitment statutes. If the facilities can be determined to have legal authority to operate such programs in accordance with their licensure and relevant statutory authorities, DSHS would conduct an RFI to solicit for consideration potential E & T providers willing and able to provide competency services. DSHS will complete this work and issue, and if viable, issue a Request for Information (RFI) by February 24, 2017.
 - b. Consider remodeling Yakima Valley School to serve up to 30 WSH discharged patients with Developmental or Intellectual disabilities who are low security and need a step down placement. DSHS Capital facilities staff, led by Bob Hubenthal, would clarify the requirements required to change current property obligations, confirm the population that could best be served, identify specific space availability and number of beds that could be created and remodeling costs, as well as associated time frames related to completing the remodel and on-boarding of staff. If this option is found to be viable, once patients are moved from WSH, space

currently vacant and remodeled to meet class member needs would be put in service to serve class members.

- c. Consider using Building Number 10 at the Veterans Affairs Campus in Retsil, Washington. This facility was recently made available to DSHS and may offer up to 78 beds. It was not a site available for consideration during the initial review of alternate sites in 2015. DSHS anticipates this facility could be remodeled into a step down low acuity/low security option for patients who are discharged from WSH. We anticipate the facility would require extensive remodel which may not make it viable for operation any sooner than 24 months from project start. DSHS Capital facilities staff, led by Bob Hubenthal, would use the \$600,000 systemic investment noted above to clarify the requirements for use of this property. This would include required changes to current property obligations, confirming the population that could best be served, identify specific space availability and number of beds that could be created and remodeling costs, as well as associated time frames related to completing the remodel and on-boarding of staff. If this option is found to be viable, once patients are moved from WSH, space currently vacant and remodeled to meet class member needs would be put in service to serve class members. DSHS would use the \$600,000 proposed above to fund the pre-design work.

While the specific operational start dates are to be determined by further work by DSHS Capital facilities, we wanted to reiterate that successful transition of patients from WSH to Yakima Valley School and/or Retsil would result in use of available forensic beds (up to 45 currently available) at WSH.

- d. Upon successful completion of the Systems Improvement Agreement (SIA) or upon the approval of the CMS approved consultant, the DSHS will pursue expansion of bed capacity at Western State Hospital in accordance with the Governor's proposed budget. This would yield 205 additional forensic beds by 2023.

3. Increase alternatives to inpatient restoration for defendants not requiring hospitalization

- a. Not all defendants adjudicated as incompetent to stand trial meet the clinical or security need for hospitalization. On January 31, 2017 Assistant Secretary Reyes approved OFMHS to move forward in its contract with Groundswell Associates to assist in creating demonstration projects in King, Pierce, and Spokane and assisting with required revisions to associated statutes and administrative codes as needed for implementation.
- b. Ingrid Lewis contacted Groundswell to confirm interest on January 27, 2017; Groundswell replied with interest and willingness to engage in this work.
- c. Dr. Kinlen will ensure contract is executed by February 17, 2017.

IV. COMPONENT 3: DIVERSION AND TRIAGE

The third component of DSHS's long-term plan is to reverse or at least stem the trend of increased demand for competency services through expanded use of Diversion and Triage.

1. Diversion

- a. Prosecutorial diversion – Contracts were shared with the court monitor on January 27, 2017. A request for review and comments for the next contracting term were made with responses due from the Court Monitor to Ingrid Lewis by March 3, 2017.
 - i. Current funding is available for the next two fiscal years (2018 and 2019).
 - ii. Programs will continue to be evaluated and a decision on whether to continue funding current projects will be made by March 2017.
- b. Use of contempt fines to fund diversion strategies
 - i. On January 30, 2017, five programs were reviewed with two programs answering all remaining questions fully and three sites needed to provide additional feedback before a final funding recommendation will be made
 - ii. The Court Monitor will brief the Court on the status of deliberations and timelines for final recommendations.
 - iii. Applicants for consideration included Comprehensive (Yakima County), King County, Kitsap County, Great Rivers (Lewis, Cowlitz, Grays Harbor, Wahkiakum and Pacific), and Sunrise (Snohomish)

2. Triage

- a. Ingrid Lewis will schedule a meeting with the Court Monitor to discuss Triage plans submitted in November 2016 and next steps.
- b. Ms. Lewis will continue to engage with local DMHP offices to determine when class members may be triaged out of jail. DSHS will participate/present at the next DMHP meeting/conference scheduled in June 2017.
- c. Ms. Lewis will continue to explore how outreach and triage will address holidays and weekends to ensure that class members have 24/7 access to triage when necessary to address their needs
- d. Ms. Lewis will explore additional jail outreach options prior to Day 13
- e. Ms. Lewis revised the Triage Memo that was distributed to stakeholders and requested input from the Court Monitor on January 31, 2017 for suggested changes. Ms. Lewis will send the revised Memo to stakeholders on February 3, 2017.

V. RESPONSES TO PLAINTIFFS' PROPOSAL

Here, DSHS responds to the proposals made by Plaintiffs on January 30, 2017. These responses are provided only for sections that are not otherwise addressed as part of DSHS's own plan above.

1. **PLAINTIFFS' RECOMMENDATION 1:** The CEOs of both state hospitals will be provided with the Court Monitor's recommendations and be encouraged to work directly with her to achieve compliance. Such communication shall include a review of the steps ESH has taken to come into compliance that should be adopted by WSH including hiring a dedicated RN recruiter, building or maximizing forensic beds, and hiring contract staff in all vacant positions across disciplines.
 - a. DSHS does not fully support this recommendation by Plaintiffs and suggests the following revisions. DSHS/OFMHS will continue to share information and Dr. Kinlen will remain the designated point of contact and responsibility for Trueblood actions and implementation. As such, he is responsible to coordinate, as appropriate, with the hospital CEOs and other DSHS staff and leaders.
 - b. In addition, DSHS has already taken steps to implement coordination between ESH and WSH. WSH has adopted similar steps to ESH to assist with recruitment including hiring a dedicated recruiter, etc.

2. **PLAINTIFFS' RECOMMENDATION 2:** Implement efficiencies in providing competency services to class members who cycle in and out of the system by creating an electronic system to flag a referral from a class member who has been evaluated or admitted for restoration services within the past five years. Defendants shall also develop methods for streamlining the provision of competency services
 - a. DSHS agrees with this recommendation. DSHS/OFMHS will work on implementing efficiencies for class members who cycle in and out of the system within five years using electronic records once each hospital has an electronic medical record. In addition, DSHS/OFMHS will continue to explore methods to streamline provision of competency restoration services

3. **PLAINTIFFS' RECOMMENDATION 3:** Defendants must begin coordinating Trueblood diversion efforts with the Governor's diversion efforts. This includes involving the Court Monitor or her designee in all meetings regarding diversion efforts.
 - a. DSHS does not fully support this recommendation by Plaintiffs and suggests the following revisions. DSHS/OFMHS commits to coordinating efforts and engaging the Court Monitor in Trueblood related projects or initiatives, including any diversion projects related to competency services. Diversion is a broad concept, not limited just to competency services and it would not be efficient or appropriate to incorporate the Court monitor into "all meetings regarding diversion efforts."

4. **PLAINTIFFS' RECOMMENDATION 4:** Defendants shall also secure the full \$4.81 million to supplement current prosecutorial diversion programs. The data from those programs shall be provided to the Court Monitor
 - a. DSHS does not fully support this recommendation by Plaintiffs and suggests the following revisions. DSHS/OFMHS has funding available for prosecutorial diversion in Fiscal Year 2018 and 2019. Additionally, the Governor's budget earmarks funding well in excess of \$ 4.81 million dollars for additional diversion projects which may

fund prosecutorial diversion as well as other effective diversion initiatives and projects.

5. **PLAINTIFFS' RECOMMENDATION 5**: Defendants must submit a Second Revised Long Term Plan by February 10, 2017. Such a plan must have the Governor's approval and include all steps referenced in Plaintiffs proposal including a consideration of community based restoration as recommended by Groundswell. The Second Revised Long Term Plan will be reviewed by the Court Monitor who will provide a written response regarding the viability of the Plan and suggestions to expedite compliance with this Court's orders
 - a. DSHS does not fully support this recommendation by Plaintiffs and suggests the following revisions. A Revised Long -Term plan will be provided within 30 days of the enacted budget and will be based on input from the Court following the submission of the Parties' respective plans. As noted above, consideration will be given to community based restoration and DSHS is pursuing this with Groundswell services (see item 3 above in Component 2).

6. **PLAINTIFFS' RECOMMENDATION 6**: Defendants' monthly reports should include a new section regarding status of compliance that includes both the Monitor's opinion "as to the sufficiency of Defendants' progress" and "recommendations for actions to remedy any lack of progress or performance by Defendants"
 - a. DSHS agrees with this recommendation by Plaintiffs. DSHS/OFMHS will add a new section to the monthly reports to allow the Court Monitor to provide updates on the status of compliance.

7. **PLAINTIFFS' RECOMMENDATION 7**: Pursuant to RCW 10.77.084(b), Defendants shall determine if the class members' clinical presentation is such that the provision of competency restoration is a viable option necessitating admission rather than a court hearing to provide this finding.
 - a. It is unclear what Plaintiffs' intended with this proposal as the suggestion that DSHS can facilitate admission for competency restoration outside the court process is not supported by statute. RCW 10.77.084(1)(b) states: "The court may order a defendant who has been found to be incompetent to undergo competency restoration treatment at a facility designated by DSHS if the defendant is eligible under RCW 10.77.086 or 10.77.088. At the end of each competency restoration period or at any time a professional person determines competency has been, or is unlikely to be, restored, the defendant shall be returned to court for a hearing, except that if the opinion of the professional person is that the defendant remains incompetent and the hearing is held before the expiration of the current competency restoration period, the parties may agree to waive the defendant's presence, to remote participation by the defendant at a hearing, or to presentation of an agreed order in lieu of a hearing. The facility shall promptly notify the court

and all parties of the date on which the competency restoration period commences and expires so that a timely hearing date may be scheduled.”

- b. As noted, the parties to the criminal matter and the criminal court may waive a defendant’s presence if a professional person has determined the defendant remains incompetent and the hearing is held prior to the expiration of the commitment period. At this time, DSHS does provide information to the parties regarding the dates on which the competency period commences and expires pursuant to the statute. In addition, DSHS does conduct evaluations prior to the expiration of the commitment period and, to the extent possible, alerts the parties of a finding of continuing incompetence such that waiver is possible. Further, the standardized court orders developed by DSHS and other stakeholders includes a provision for the parties to preemptively activate this waiver provision in RCW 10.77.084(1)(b). See pg. 5 of form order MP 240. However, DSHS cannot unilaterally detain an individual beyond the expiration of the competency period absent action by the criminal parties and court within the required timeframe.
8. **PLAINTIFFS’ RECOMMENDATION 8**: Defendants should utilize the Court Monitor and her experts as resources for developing compliance plans and ensuring that the actions they take will lead time to comply with this Court’s injunction in a timely manner.
 - a. DSHS largely agrees with this recommendation by Plaintiffs. DSHS/OFMHS will utilize the Court Monitor and experts as resources.
 9. **PLAINTIFFS’ RECOMMENDATION 9**: It may be useful for the Monitor to open and staff a local office and bill Defendants for these costs.
 - a. DSHS does not fully support this recommendation by Plaintiffs. Before funds are expended on the opening and staffing of a local office, there are numerous steps that can be taken to improve communication and feedback between the Monitor and DSHS. Reinstating the quarterly reports from the Monitor, the new Monitor’s section in the monthly reports, the continued use of local experts, and leveraging technology (web meetings, email, phone, etc.) are all equally effective, and more cost conscious, options for ensuring that the Monitor is more accessible.

VI. CONCLUSION

DSHS is requesting a systemic investment of \$3.8 million dollars from the court to hire additional evaluators and provide funds to complete the design effort of a 78-bed facility to provide step down placement for individuals in the community. This will move the system toward expanded capacity in the community and move the hospitals toward expanding services for forensic patients.

DSHS is committed to meeting the requirements of the *Trueblood* decision and continues to work toward that commitment.