UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASSIE CORDELL TRUEBLOOD, et al., Plaintiffs, v. WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, et al., Defendants.	CASE NO. C14-1178-MJP ORDER DENYING DEFENDANTS' MOTION TO RECONSIDER INJUNCTION REGARDING TIMING OF SERVICES AND INPAIENT EVALUATIONS

THIS MATTER comes before the Court on Defendants' Motion to Reconsider Scope of Injunction Regarding Timing of Services and Inpatient Evaluations. (Dkt. No. 288.) Having considered the Parties' briefing and the related record, the Court DENIES the Motion.

Background

On April 2, 2015, this Court imposed a multipart injunction that required Defendants to cease violating class members' constitutional rights by providing timely competency services by, among other things: (1) completing provision of in-jail competency evaluations within seven

days of the signing of a court order, unless an extension is secured for clinical good cause, (2) admitting those ordered to receive an in-hospital competency evaluation to a state hospital within seven days of the signing of a court order, and (3) admitting those ordered to receive competency restoration services to a state hospital within seven days of a court order. (Dkt. No. 131 at 21-23.)

Defendants appealed the portion of the injunction relating to in-jail evaluations, but did not appeal the portions relating to in-hospital evaluations or restoration services. See Trueblood v. Washington State Dep't of Soc. & Health Servs., 822 F.3d 1037 (9th Cir. 2016). On appeal, the Ninth Circuit affirmed class members' constitutional right to timely competency evaluations, but vacated the seven-day requirement imposed by this Court as to in-jail evaluations. (See Dkt. Nos. 233, 303.) After reexamination, this Court modified the injunction to require the completion of in-jail evaluations within fourteen days of the signing of a court order for such services. (Dkt. No. 303.)

Although Defendants' appeal concerned only in-jail evaluations, Defendants now argue that the logic and reasoning underlying the Ninth Circuit's opinion requires reevaluation of two components of the injunction not relating to in-jail evaluations. (Dkt. No. 288.) First, Defendants argue that the time limit for admission to a state hospital for inpatient evaluations and restoration services should be calculated from the date Defendants receive the court order and other necessary documentation, rather than the date the court order is signed. (Id. at 3-10.) Second, Defendants argue the portion of the injunction relating to in-hospital evaluations should be amended to require only that Defendants comply with state law, which requires admission within fourteen days of receipt of the necessary documentation. (Id. at 5-12.)

Plaintiffs oppose the Motion, arguing that it is time-barred and that nothing in the Ninth Circuit's opinion requires the revisions Defendants request. (Dkt. No. 291.)

Discussion

I. Timeliness of Motion

Plaintiffs argue Defendants' Motion is time-barred. Plaintiffs argue that although Local Civil Rule 7(h) requires motions for reconsideration to be filed within fourteen days of the order to which they relate is filed, Defendants' Motion was filed 455 days after the Court imposed the injunction and 28 days after the Ninth Circuit issued the mandate upon which Defendants' Motion is based. (Dkt. No. 291 at 1-4.) Plaintiffs further argue that Defendants lost the ability to challenge the undisturbed portions of this Court's injunction when they chose not to appeal them within 30 days of judgment. Plaintiffs contend allowing Defendants to use this Motion as a "backdoor means of appeal would frustrate the interests in finality and judicial economy Rule 4 is intended to serve." (Id. at 3-4.)

Defendants argue their Motion is timely under Fed. R. Civ. P. 60, which allows motions brought "within a reasonable time" when a judgment "is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or . . . any other reason that justifies relief." (Dkt. No. 293 at 1-3) (citing Fed. R. Civ. P. 60(b)(5)-(6) and (c)(1).)

Considering the equitable principles underlying Fed. R. Civ. P. 60's timing provision, the Court finds it appropriate to consider the merits of Defendants' Motion. While the Court finds Defendants' Motion timely under Fed. R. Civ. P. 60(c)(1), however, the Court finds Defendants have failed to establish an entitlement to relief under Fed. R. Civ. P. 60(b) based on the Ninth Circuit's opinion in Trueblood v. Washington State Dep't of Soc. & Health Servs., 822 F.3d 1037 (9th Cir. 2016).

II. Time Limit Begins at Date of Court Order

Defendants first argue that the time limit for admission to a state hospital for inpatient evaluations and restoration services should be calculated from the date Defendants receive the court order and other necessary documentation, rather than the date the court order is signed. (Dkt. No. 288 at 3-10.) Defendants argue that because the deadline for completion of in-jail evaluations is calculated from the date the Washington Department of Social and Health Services ("DSHS") receives the court order and other documentation, the deadlines for admission for in-hospital evaluations and restoration services should be calculated in the same manner. (Id.) Plaintiffs oppose the request. (Dkt. No. 291 at 4-9.)

Defendants' argument rests on a proposition already rejected by the Court. After this Motion was fully briefed, the Court issued its Order Modifying Permanent Injunction as to In Jail Competency Evaluations, in which it found that in-jail competency evaluations must be completed within fourteen days of the signing of a court order, not fourteen days from DSHS's receipt of the court order. (Dkt. No. 303 at 31-32.) In making that determination, the Court found that the concerns articulated by the Ninth Circuit when it remanded the issue for further consideration and repeated here by Defendants were no longer relevant because of, inter alia, (1) statutory changes since trial that now legally require stakeholders to submit documents to DSHS within twenty-four hours of the signing of a court order, (2) the fact that, as of May 2016, all necessary documents were received by DSHS on the same day the court order was signed in at least seventy-one percent of cases, and all necessary documents were received in three days or less in ninety-five percent of cases, and (3) testimony by DSHS's community outreach liaison that DSHS had just begun contacting stakeholders around the state to inform them of the new twenty-four-hour requirement, and that DSHS expected the percentage of cases in which DSHS

receives all necessary documents on the same day the court order is signed to continue to rise over the coming months. (Id. at 14, 31-32.) For the sake of judicial economy, that discussion is not repeated here.

In order to provide timely competency services, DSHS cannot passively wait to receive easily available information, but instead must actively participate in building a system that allows courts and other stakeholders to quickly transfer orders, discovery, and other information directly to DSHS. Defendants' first request is DENIED.

III. Seven Days to Admit Class Members to State Hospital for Evaluation

Next, Defendants argue the portion of the injunction relating to in-hospital evaluations should be amended to require only that Defendants comply with state law, which requires admission within fourteen days of receipt of the necessary documentation. (Dkt. No. 288 at 5-12.) The Court disagrees.[1]

The Court finds that the statutory fourteen-day requirement for admission for an in-hospital evaluation does not bear a reasonable relation to the purposes of the confinement as it relates specifically to class members awaiting in-hospital evaluations, and concludes now as it did before that seven days is the maximum justifiable period of time to incarcerate a class member waiting for admission to a state hospital for an in-hospital evaluation.[2] Once the system

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[1] In arriving at these conclusions, the Court relies on testimony and evidence from trial and from the evidentiary hearings held since trial, other evidence in the record, and findings of fact made and entered in Dkt. Nos. 131, 186, 289, and 303.

[2] To evaluate Defendants' request to modify the injunction, the Court must determine whether the nature and duration of the confinement imposed by the statutory fourteen-day standard bears some reasonable relation to the purpose for which the individual is committed. See Jackson v. Indiana, 406 U.S. 715, 733-38 (1972), Youngberg v. Romeo, 457 U.S. 307, 321 (1982), Trueblood, 822 F.3d at 1043-45. The Court must make this determination by balancing the legitimate interests of class members against the legitimate interests of the state. Trueblood, 822 F.3d at 1043-45 (finding the framework adopted by the Ninth Circuit in Oregon Advocacy Ctr. v. Mink, 322 F.3d 1101 (9th Cir. 2003), to be "equally applicable to individuals awaiting competency evaluations"). The Court has written at length

provides for a reasonable amount of time in which to transmit information, to arrange and prepare for the transport of an individual from a jail to one of the two state hospitals, and to complete the transport, each additional day of delay works against the interests of all Parties. And, although class members awaiting in-hospital evaluations have some similarities with class members awaiting in-jail evaluations, a number of key differences between the groups and their situations, stemming from the legal framework provided by state law as it relates to the two groups, necessitate different wait-time standards for the two groups:

First, the tasks to be completed are different. In-jail evaluations must be completed within fourteen days, whereas the seven-day standard for in-hospital evaluations requires only that Defendants admit class members to a hospital so that an evaluation can begin.

Second, because the tasks are different, the interests of the Parties are different. While class members retain their interests in "mitigating the harm caused to detainees who languish in jail awaiting a competency determination and in reducing the impact of solitary confinement and other conditions often imposed on mentally ill detainees who are awaiting evaluation," the state's interests in "accurate evaluations, preventing the stigma of an incorrect determination, avoiding undue separation of a detainee from her counsel and family, and protecting the detainee's rights to counsel and against self-incrimination" are not implicated for the in-hospital evaluation subgroup. Trueblood, 822 F.3d at 1044-45. The time it takes Defendants to admit a class member to a state hospital has no impact on the accuracy of the evaluation conducted entirely after the class member has been admitted, and therefore there can be no impact on any stigma resulting from an incorrect determination. Furthermore, when an evaluator or a court orders a

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about the interests of class members and of the state at the competency evaluation stage, and about how those interests interact when balanced against each other. (Dkt. No. 303.) The Court now incorporates that discussion and will not repeat it here except to note how those interests, when considered in the in-hospital evaluation context, differ from the interests in the in-jail evaluation context.

class member to receive an in-hospital evaluation, they will necessarily be separated from their community, counsel, and family. This separation is not "undue"—it is a mandatory component of the decision to order an in-hospital evaluation instead of an in-jail evaluation. Nothing in this Court's injunction determines whether a class member is ordered for evaluation in a hospital or in a jail—the decision stems entirely from state law and the decision of the state court judge or evaluator. And, because the evaluation occurs entirely after the class member is admitted to the state hospital, the time by which Defendants must admit the class member has no impact on the availability of defense counsel to participate in the actual evaluation.

Defendants now argue that the state also has a legitimate interest in reducing "misuse" of the in-hospital evaluation system so as to "avoid[] a system that encourages defendants and defense counsel to seek inpatient evaluations as a means to obtain a faster evaluation" because a system with "shorter timelines for inpatient evaluation versus in-jail evaluation" would "tak[e] away from those who truly need treatment." (Dkt. No. 288 at 11-12.) The Court disagrees. First, Washington law allows state judges to order in-hospital evaluations in only three circumstances. RCW 10.77.060(d) ("The court may commit the defendant for evaluation to a hospital or secure mental health facility without an assessment if: (i) The defendant is charged with murder in the first or second degree; (ii) the court finds that it is more likely than not that an evaluation in the jail will be inadequate to complete an accurate evaluation; or (iii) the court finds that an evaluation outside the jail setting is necessary for the health, safety, or welfare of the defendant."). In these circumstances, the court—not the class member or her defense counsel—has found an in-hospital evaluation appropriate. While class members may prefer in-hospital evaluations, that decision is simply not theirs to make. The only other mechanism allowing for in-hospital evaluations is an evaluator's decision that "inpatient commitment is

needed." RCW 10.77.060(c). Again, the in-hospital evaluation is being conducted because an evaluator—not a class member or her counsel—decided that was preferable, and all evaluators are DSHS employees except for the Pierce County panel evaluators. Second, contrary to Defendants' assertion, a seven-day time limit for admission to a state hospital for an in-patient evaluation would appear to result in a longer timeframe for inpatient evaluations than for in-jail evaluations, not a shorter timeframe. RCW 10.77.060(c) allows for up to fifteen days to complete the evaluation once admitted to a hospital. Therefore, a completed in-hospital evaluation would take up to twenty-two days (up to seven for admission, up to fifteen for completion), whereas an in-jail evaluation must be completed within fourteen days. Because Defendants have not provided any explanation for their unsupported conclusion that in-hospital evaluations would occur faster than in-jail evaluations, (see Dkt. Nos. 288 at 11-12, 293 at 1-8), the Court is unable to accept this conclusory assertion as a legitimate interest.

The legitimate interests maintained by the state in the in-hospital evaluation context—bringing those accused of a crime to trial, evaluating a potentially incompetent defendant's competency so as to determine whether he or she may stand trial, restoring the competency of those found incompetent so that they may be brought to trial, and maintaining an efficient and organized competency evaluation and restoration system, the administration of which uses public resources appropriately—as well as the legitimate interests of class members awaiting in-hospital evaluations, all weigh against a fourteen-day standard and in favor of a shorter, seven-day standard.

Third, the barriers to timely in-jail evaluations and the barriers to timely admission for in-hospital evaluations differ significantly, and there are many fewer barriers in the in-hospital evaluation context. Completing in-jail evaluations within fourteen days requires the cooperation

of evaluators, defense counsel, jail administrators, interpreters, defense experts, and other stakeholders. In contrast, admission for in-hospital evaluations requires only that the jail provide medical clearance for the class member, and jails are now legally required to provide medical clearance information within twenty-four hours of the signing of a court order for an evaluation. RCW 10.77.075. The only other thing that needs to be done within the seven days lies entirely within the control of Defendants: providing a bed in a state hospital. In fact, Defendants do not even need the discovery or charging documents because the seven-day timeframe does not require Defendants to actually conduct an evaluation—it simply requires them to open a bed for the class member at a hospital.

Finally, in invoking principles of federalism and asking the Court to defer to state law as to the fourteen-day standard, Defendants ask the Court to ignore another state law, and the policy judgments underlying that law. As discussed above, Washington law allows for in-hospital evaluations only in limited circumstances, and ninety percent of competency evaluations in Washington happen outside of a state hospital. (Dkt. No. 131 at 6.) The distinction between class members who receive in-hospital evaluations and those who receive in-jail evaluations was created by Washington law, not by this Court. The policy judgments underlying that distinction—that class members ordered to be evaluated in a hospital are more in need of mental health services in a hospital setting than the other ninety percent of people ordered to receive competency evaluations—are entitled to as much deference from this Court under principles of federalism as the fourteen-day standard enacted four days before trial in this matter. (See Dkt. No. 303 at 10-12.) Additionally, that state law requires either a judge or an evaluator to be the one to make the determination that an in-hospital evaluation is appropriate represents a legislative determination not only that judges and evaluators are capable of identifying people

who are actually in need of hospitalization while receiving services, but that judges and evaluators, not DSHS administrators, should be the ones to make that determination. Accordingly, the Court must reject Defendants' contention that people who receive in-hospital evaluations are "taking spots away from those who truly need treatment." (Dkt. No. 288 at 12.)

Similarly, arguments advanced by Defendants such as a murder charge "alone makes it no more likely that a defendant will be found incompetent or will need the specialized care available in a state hospital," and therefore that this is "not a population that should be rushed to the hospital," (Dkt. No. 288 at 11), miss the point entirely. This Court has not ordered that people with murder charges be evaluated in a state hospital—that decision was made by state law in conjunction with the ordering judge or evaluator, and is the binding law of Washington state, whether DSHS agrees with it or not. Defendants have proven themselves capable of lobbying for desired legislation, and principles of federalism counsel that Defendants make these arguments to the legislature, not to this Court.

In sum, the Court finds once again that wait times in excess of seven days contravene the interests of both the state and class members, and do not bear a reasonable relation to the purpose of the confinement. See Jackson, 406 U.S. at 733-38. The Court understands Defendants' desire to reserve scarce hospital bed space for class members already found incompetent and badly in need of restoration and treatment. But the solution is to secure adequate bed space to provide timely services to all class members, not to seek to delay services to those DSHS deems less in need. Washington's policy is that certain people be evaluated in a hospital; Defendants must meet the obligation contained in that policy judgment while still providing timely restoration services to others. "Lack of funds, staff or facilities cannot justify the State's failure to provide [class members] with [the] treatment necessary for rehabilitation." Mink, 322 F.3d at 1121

(quoting Ohlinger v. Watson, 652 F.2d 775, 779 (9th Cir. 1980)). Defendants have known for years that they lacked sufficient bed space to provide timely services, having been told so by both experts of their own choosing and outside auditors hired by the state legislature. Defendants' failure to take all reasonable steps to reduce wait times by, inter alia, securing more bed space, has resulted in this Court's finding that Defendants are in contempt of this Court's orders. (Dkt. No. 289.) Defendants must rise to the occasion and engage in the serious reforms necessary to improve the timeliness of competency services—the constitutional rights of some of our most vulnerable citizens depend on it. Defendants' second request is DENIED.

Conclusion

Defendants' Motion to Reconsider Scope of Injunction Regarding Timing of Services and Inpatient Evaluations is DENIED. (Dkt. No. 288.)

The clerk is ordered to provide copies of this order to all counsel.

Dated this 19th day of August, 2016.

Marsha J. Pechman
United States District Judge