

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

IN RE DETENTION OF A.W.,

IN RE DETENTION OF T.F.W.

IN RE DETENTION B.B.

IN RE DETENTION J.Q.

IN RE DETENTION T.C.

IN RE N.R.

IN RE S.K.

IN RE H.P-L.

IN RE M.B.

IN RE J.C.

IN RE D.S.

IN RE E.G.

Cause No: 16-6-00234-0

Cause No: 16-6-00399-1

Cause No: 16-6-00412-1

Cause No: 16-6-00464-4

Cause No: 16-6-00468-7

Cause No: 15-6-00498-1

Cause No: 13-6-00143-8

Cause No: 15-6-01432-3

Cause No: 16-6-00581-1

Cause No: 16-6-00584-5

Cause No: 15-6-01645-8

Cause No: 15-6-01417-0

MEMORANDUM DECISION AND ORDER

These consolidated cases arise from issues attendant to the admission of patients into Western State Hospital pursuant to superior court orders. They involve admission, discharge, the use of consecutive single bed certification, and other related matters.

Western State Hospital has established a waiting list for admission to the hospital, maintaining that it is in danger of losing its accreditation and Medicare certification because of inadequate staff-patient ratios, lack of safety of patients and staff, escapes and other security deficiencies.

When the civil commitment division of the superior court enters an order detaining a person for not more than 90 or 180 days of treatment, and the person is a Pierce County resident, the person is not immediately admitted to Western State Hospital. Rather, the person remains in detention in a community hospital or in an Evaluation and Treatment facility on consecutively granted thirty (30) day single bed certifications.

Western State Hospital administration says that it cannot accommodate a greater level of incoming patients without a corresponding level of discharges and points to the Behavioral Health Organizations (formerly called Regional Support Networks or RSNs) for that responsibility. The consolidated cases named herein share the same interrelated issues.

FACTUAL AND LEGAL ISSUES:

1. A.W.: 16-6-00234-0: Respondent remains under court ordered treatment at a community hospital after being cleared of any medical issues and has been in a community hospital for all 90 days of a 90 day commitment order. While in hospital care, the State petitioned for and obtained an order for 180 days of treatment. Consecutive single bed certifications have been obtained pending admission to Western State Hospital.
2. T.F.W.: 16-6-00399-1: Respondent was ordered to long term commitment on May 17, 2016 but remains housed at the Evaluation and Treatment Center. She did not want to go to the State hospital but the Evaluation and Treatment Facility has no legal authority to provide long term care.
3. B.B.: 16-6-00412-1: Respondent remains in the care of a community hospital on consecutive single bed certifications and is on a waiting list for admission. He suffers from dementia. He was ordered to the state hospital on May 4, 2016.
4. J.Q.: 16-6-00464-4: Respondent remains in the care of community hospital after being stabilized and medically cleared for release. He was ordered to the state hospital on May 17, 2016.
5. T.C.: 16-6-00468-7: Respondent was not admitted to long term care. She stipulated to the 90 day detention but wanted to stay at the Evaluation and Treatment Facility which had no legal authority to house her.
6. N.R.: 15-6-00498-1: Respondent had been placed on active discharge list and when he was administratively transferred to another ward (due to no bad conduct by Respondent) he was removed from the active discharge list so his

new treatment team could get to know him and pass on issues of discharge. He testified that he was "losing hope" due to having had good conduct and having no idea why he was taken off discharge list.

7. S.K.: 13-6-00143-8: Respondent had been on active discharge list for 2 years, then removed from the list to a single act of negative conduct. WSH claims there is no bed available in community.
8. H.P-L.: 15-6-01432-3: Respondent has been in a community hospital and has been cleared for transfer to long term treatment but remains on waiting list. Does not need hospital level care. BHO testified that DSHS Home and Community Services will only allow one placement referral at a time so as not to "lose credibility".
9. M.B.: 16-6-00581-1: Respondent has been in community hospital for approximately 300 days. The BHO apparently cannot find certified long term treatment for her. Community based hospital has contacted 54 dementia care providers throughout the State of Washington and can find no one to admit her. Community based hospital has offered to fund her stay with private foundation funds and can find no one to admit her. Community based hospital has no dementia specialists, no neuropsychological specialists and patient is getting individualized treatment—albeit nominal and not to standard of Western State Hospital. According to regional complex care manager, the state hospital will not even put her on a waiting list.

10. J.C.: 16-6-00584-5: Respondent remains housed at a community hospital, should be at Western State Hospital, Evaluation and Treatment Centers will not admit him due to medical concerns but could be managed in state hospital. Has been assaultive to staff at community hospital.
11. D.S. : 15-6-01645-8: Respondent remains at an evaluation and treatment facility by virtue of consecutive thirty day single bed certifications to avoid acceptance at Western State Hospital, in violation of this Court's ruling that the use of consecutive single bed certifications violates the statute. the administrative and defies logic and common sense.
12. E.G. : 15-6-01417-0: Respondent remains in a short term treatment facility in violation of the Court's Order to admit the patient to the state hospital for long term treatment or face monetary penalties. Penalties incurred but have not been paid.

LEGAL AUTHORITY:

RCW 71.05.137(2) and (4) provide the legal bases for the authority of the court.

It provides:

"The Judges of the superior court of the county by majority vote may authorize mental health commissioners, appointed pursuant to RCW 71.05.135, to perform any or all of the following duties:

...

(2) Investigate the facts upon which to base warrants, subpoenas, orders to directions in actions, or proceedings filed pursuant to this chapter or RCW 10.77.094;

...

(4) Hold hearings in proceedings under this chapter or RCW 10.77.094 and make written reports of all proceedings under this chapter or RCW 10.77.094 which shall become a part of the record of superior court;

...

(Emphasis added).

In addition, the superior court has the inherent legal authority to enforce the orders it makes. A superior court making an order has not only the right, but the duty to make its orders effective and prevent the evasions thereof, Goodsell v. Goodsell, 38 Wn.2d 135 (1951); State ex rel. Jiminez v. Superior Court, 24 Wn.2d 194 (1945).

LEGAL AUTHORITY REGARDING INVOLUNTARY TREATMENT TO WSH:

The ultimate issues in these cases originated 35 years ago in the case of Pierce County Office of Involuntary Commitment v. Western State Hospital, 97 Wn.2d 264 (1982). In that case, the Supreme Court reviewed writs of mandamus which required Western State Hospital to accept persons presented to the hospital for evaluation. The hospital argued that they could not accept patients. The court found, at page 266-267:

"Western State Hospital is an accredited hospital and is in danger of losing both its accreditation and Medicare certification because of loss of adequate staff-patient ratios. Pursuant to an admissions control policy which was established in 1981, the evaluation and treatment center would not admit patients beyond its 52 bed capacity in the absence of a court order."

The actions of the plaintiffs in that action were to secure an overarching order of admission so that they did not need to go to court on every case to secure a court

order. The Court granted the request and said that although the Court sympathized with institutions who have to bear the frustrations of overcrowding the problem is one which requires legislative intervention.

In 2008, the Courts again ruled, in Pierce County v. State of Washington, 144 Wn.App. 783 (2008), that the same issue was presented when Western State Hospital refused to admit those to whom they owed a duty to treat. The Court again found that Western State Hospital had adopted a policy of declining to accept patients committed by the courts, the court said at page 804:

“The State of Washington, acting through Western State Hospital (WSH), adopted a policy or practice in approximately June 2002 of declining to accept patients committed by the courts to the custody of the Department of Social and Health Services (DSHS) for long term care under RCW 71.05.320, based on conditions at WSH including patient safety, patient census or staffing.”

In these cases, the same issues and the same excuses for declining to accept patients survive to this day. There are no new reasons, factual or legal, advanced to excuse the duty of Western State Hospital to accept those ordered into its care.

Public Mental Health System:

The Court, in Pierce County v. State, supra, clearly sets forth the statutory scheme at page 796-798:

In Washington, the State supports the adult public mental health system in two ways. The Department (DSHS) is designated as the state mental health authority and operates Western State Hospital and Eastern State Hospital [citation omitted]. These inpatient psychiatric facilities are statutorily mandated to handle “the most complicated long-term care needs of patients with a primary diagnosis of mental disorder”.

...

The 72-hour and 14-day time frames are referred to as short-term care. Evaluation and treatment facilities take only patients who are detained for 72 hours or committed for up to 14 days [citation omitted].

...

If the court or a jury determines that the patient meets the criteria for 90 days of involuntary treatment, the court "shall remand him or her to the custody of the department or to a facility certified for ninety day treatment for a further period of intensive treatment, RCW 71.05.320(1)." In certain cases, the initial long-term commitment may be 180 days, in which case the commitment must be in a "facility certified for one hundred eighty day treatment by the department.", RCW 71.05.320(1)(a), (b).

It is clear that the issue relating to the Court's authority to order long term inpatient treatment is found in the statute, at RCW 71.05.320. In that statute, the command is mandatory. That is, the Court "shall" order the person remanded to the department [DSHS] or to other treatment certified as "long term" treatment.

The State argues that it has no duty to immediately admit the person ordered into custody. However, that issue was settled in Pierce County v. State, supra, at page 812:

The trial court did not err in interpreting the Involuntary Treatment Act to require the State to assume immediate and sole responsibility for the care and cost of patients committed for long-term treatment. [Emphasis added]

There is no question: the State of Washington is under a statutory duty to accept patients as ordered by the Court under RCW 71.05.320, unless there is another facility certified by the department to provide long term intensive inpatient treatment.

The State has expressly admitted that the mandate of RCW 71.05.320: (see Western State Hospital's Memorandum of Points of Authority, page 4, filed in Pierce County cause 16-6-00412-1) wherein it states:

"DSHS acknowledges the mandate of RCW 71.05.320(1) to accept patients remanded to the custody when so ordered. The state hospital's responsibility for long-term care has been emphasized by the courts [citations omitted]".

In the case of Trueblood v. Washington State Department of Social and Health Services (United States District Court, Western District of Washington, at Seattle, Case number C14-1178 MJP), the Honorable Marsha Pechman said, in her memorandum opinion, at page 3:

"The mentally ill are deserving of the protections of the Constitution that our forefathers so carefully crafted. The rights protected can be difficult and sometimes costly to secure; however, the Constitution is a guarantee to all people, and is not dependent upon a price tag. The state must honor its obligations under the law."

Judge Pechman went on to say, at page 22:

"Defendants (DSHS) have demonstrated a long history of failing to adequately protect the constitutional rights of Plaintiffs and class members, and have acknowledged that this failure is indefensible."

Long Term Treatment Certification:

Until recently, only Western State Hospital was certified to provide care for those needing long term care. However, on or about May 4, 2016, the Behavioral Health Administration issued a letter to all four Evaluation and Treatment Centers in Pierce County. A copy of that letter is attached as Exhibit 1.

That letter was not a grant of certification. Rather, it was a grant of "exception" to the requirement of certification. The letter came about when the Department of Behavioral Health contacted the Pierce County BHO, (Optum), to see if any of the local evaluation and treatment centers would be interested in having that exception in order to provide long term care. A response was made in the affirmative and the Behavioral Health Administration issued the letter. Although the text of the letter makes it appear as if the Evaluation and Treatment Centers made the request for this exemption, it was, in fact, solicited by the Behavioral Health Administration of the State of Washington.

The letter provides that the Evaluation and Treatment Centers may provide care in five basic scenarios, denoted at paragraphs 1 (a) through (e). Subsections 1(a) and (b) are nothing more than a restatement of the law relative to short term treatment (72 hour and 14 day commitments). The long term care sections are contained at paragraphs (c), (d) and (e). Those sections are expressly conditioned upon paragraph 2 of that letter.

Paragraph 2 provides as follows: "Findings or agreements, required in 1 c, d, and e, and the reasons supporting such findings must be included in the WSH (Western State Hospital) and facility patient's clinical record."

Therefore, in order for the Evaluation and Treatment Centers to provide long-term intensive inpatient treatment, there must be findings in both the E & T clinical records AND the clinical records of Western State Hospital. However, Western State Hospital has no clinical record of any patient until such time as they are admitted,

screened and evaluated. There cannot be, under paragraph 1(e) of the exemption letter, an exemption, if there is no clinical record from Western State Hospital.

This conclusion is warranted from the express language of paragraph 2 of Exhibit 1. Accordingly, there is no legal authority for any of the four Pierce County Evaluation and Treatment Centers to provide long term care UNLESS the express terms of their grant of exception have been met.

Consecutive single bed certifications:

Those who are waiting for admission to Western State Hospital are being held on single bed certifications under the authority of WAC 388-865-0526.

In a recent case, In Re: D.W., 181 Wn.2d 201 (2014), the Court said that single bed certifications could not be used to avoid overcrowding at certified evaluation and treatment facilities. The corollary to this is: may single bed certifications be used to avoid overcrowding at facilities designed for long term treatment? The statute, RCW 71.05.320, is clear: the patient must be admitted to Western State Hospital or to other facility certified for long term treatment. The Evaluation and Treatment facilities in Pierce County are not legally certified as long term treatment facilities until there is strict compliance with the terms of the granted exception.

A related and significant concern is the whether use of consecutive thirty day single bed certificates is warranted by law. The Washington State Hospital Association opines that the use of consecutive single bed certifications is contrary to the law. This Court has previously found such practice to be in violation of the law in the consolidated

case involving the Detention of D.S., Pierce County cause number 15-6-01645-8 where the court opined as follows:

D.S. is a mental health services consumer in Pierce County. Most recently she was detained on an emergency 72 hour hold December 30, 2015. A Petition for a 14-day detention was filed January 4, 2016. This was D.S.'s ninth detention at Telecare (one of four Pierce County Evaluation and Treatment facilities). She had been detained eight times over the previous 26 months. She stipulated to a 14-day detention January 5, 2016. A Petition for 90-days of treatment was filed January 13, 2016. A 90-day order was entered January 19, 2016. That order provided that D.S. was to be detained to Western State Hospital and further provided that D.S. was not expected to be ready for discharge within the next thirty days and would not receive appropriate treatment in the evaluation and treatment facility.

Telecare, the Evaluation and Treatment Facility where D.S. was detained, sought, and was granted three consecutive single bed certifications for 30 days each: January 19, 2016; February 19, 2016; and March 18, 2016 by DSHS. This meant that D.S. remained in an Evaluation and Treatment facility and was not transferred to Western State Hospital, contrary to the Court's ruling on January 19, 2016. D.S. was finally released to the care of Western State Hospital on April 13, 2016—85 days after the original order was entered. Before she was released to Western State Hospital, a separate Petition for 180 days of treatment was filed March 22, 2016, and an order granting the 180 day commitment was entered April 19, 2016. During her extended stay at Telecare, D.S. did not receive any of the court ordered cognitive testing.

The court held review hearings relative to why D.S. had not been transferred to Western State Hospital. Those hearings were held on January 29, 2016, and February 12, 2016. On March 25, 2016, the Court ordered a show cause hearing and directed the parties to show cause as to why she had not been transferred to Western State Hospital.

Prior to that hearing, both the State and Telecare filed motions to dismiss or strike the hearing as being moot given that D.S. had finally been admitted to the hospital. The Court denied the motions and proceeded with oral argument.

After reviewing issues of mootness and other matters, the Court addressed the issue of consecutive single bed certifications.

Consecutive 30 day single bed certifications:

The Court analyzed the statute in RCW 71.05.320, providing that when the facts have been proven on a 90-day petition (see RCW 71.05.280), "...the court shall remand him or her to the custody of the department or to a facility certified for ninety day treatment...".

The command of the statute is that the court "shall" remand the person to the custody of the department (DSHS and to the hospital), and to do so immediately. In this case, that is exactly what the Court did.

However, instead of being transferred to the state hospital for the long term mental health treatment she required, D.S. remained in the custody of the Evaluation and Treatment Center. This was done by virtue of three consecutively obtained "single bed

certifications” from DSHS (see Declaration of Myra Paull in underlying case involving D.S., Pierce County cause number 15-6-01645-8, for attached copies of each). These were obtained under the authority of WAC 388-865-0526.

WAC 388-865-0526 provides, in pertinent part, as follows:

“At the discretion of the department, an exception [to treatment in the hospital] may be granted to allow timely and appropriate treatment to an adult...for a **maximum of thirty days** to allow a community facility to provide treatment to an adult on a ninety- or one hundred eighty-day inpatient involuntary commitment order.” [Emphasis added].

Contrast this portion with subsection (6) of the same section which provides:

“A consumer who receives services under a single bed certification under this section must be transferred...to a state hospital if on a ninety- or one hundred eighty-day inpatient commitment, as soon as the attending physician considers the consumer medically stable and a bed becomes available, unless the treating facility consents to continue treatment and continued treatment in the current setting is consistent with the best clinical interests of the consumer.”

The first portion of this WAC provides that the exception to admission to the state hospital for long term mental health treatment is to be a maximum of thirty days at an inpatient care facility, i.e.: an Evaluation and Treatment facility. However, subsection (6) seems to indicate that there may be an exception if a bed is not yet available.

Rules of statutory construction provide that statutes should be construed so that no portion is to be rendered superfluous, State v. Roggencamp, 153 Wn.2d 614 (2005).

To read subsection (6) as supervening the first section would be to make the apparent mandate of the first section completely meaningless. That is, the exception would swallow the rule.

Likewise, subsection (6) addresses those respondents who may have physical issues necessitating medical hospital/rehabilitation treatment (reference to "attending physician" and being "medically stable") which are different concepts from those presenting solely with mental illness.

The State and Telecare assert that there is no prohibition against filings for consecutive 30 day single bed certifications and that the "maximum of thirty days" is just a limit as to each individual request and not in gross. The Court concludes that this analysis is erroneous. Following the suggested interpretation to its logical conclusion allows the State of Washington to completely abrogate its statutory duty to provide the necessary long term mental health services needed in a hospital setting for those detained for 90 days, see RCW 71.05.320.

This is specifically contrary to WAC 388-865-0526(5) which provides, in pertinent part: "The single bed certification must not contradict a specific provision of federal or state law.". To allow consecutive thirty day single bed certifications certainly is contrary to the statutory mandate of RCW 71.05.320.

And, in the case of In re: D.W., 181 Wn.2d 201 (2014) the Court analyzed the predecessor of WAC 388-865-0526, relative to single bed certifications. Therein, the Court said that the State could not use single bed certifications merely because there

was a lack of staff, funds or facilities, citing to Oregon Advocacy v. Mink, 322 F.3d 1101 (2003).

The Court rejects the State's analysis because it would allow Western State Hospital to avoid taking any individual committed for either 90 or 180 days by allowing successive 30 day single bed certifications. This construction of the WAC would then circumvent the statutory duty of the State set out by RCW 71.05.320. This is clearly what occurred with D.S. That is, she was ordered to be remanded to the care of the Department (State of Washington) for a period not to exceed 90 days so that her mental health needs could be met. Instead, she remained in an Evaluation and Treatment Facility (Telecare), in inpatient custody for 85 days where she did not get the services that had been ordered for her: to wit, cognitive testing. To state the matter in its most simple form: Services delayed are services denied. An evaluation and treatment facility may only apply for one thirty day single bed certification, per consumer.

Additionally, the plain language of WAC 388-865-0526, vitiates against the argument of the State. That is, sections (2)(b)(i) through (iii) indicate when a single bed certification may be issued.

Subpart (2)(b) says that the request must meet one of three criteria. The first, subpart (2)(b)(i), provides that the consumer is expected to be ready for discharge within the next thirty days. In this case, the Court previously made a finding to the contrary. Likewise, the thirty day period in this section ties directly in with the thirty day provision in the main section of the WAC. That is, the thirty days is a finite time period to allow the patient to re-compensate to the point of discharge. If the general thirty day

provision is to be construed to mean that it is thirty days for each separate certification and can be extended by serial filings, then there would be no reason to have any further limit on re-compensating the person to the point of discharge. Such a conclusion is unfounded. Reading those two sections together one must conclude that the certification is limited a single thirty day certification.

Subpart (2)(b)(ii) provides that a single bed certification may be granted to someone who is receiving treatment at a residential treatment facility. The definition of "residential treatment facility" is at WAC 246-337-005 and includes evaluation and treatment facilities. Although Telecare "checked this box" on its application for the single bed certifications, it would make no logical sense that just because a person is receiving treatment at such a facility that there is no time limit to them being there. So, although Telecare is a "residential treatment center" that designation does not confer any greater rights to the evaluation and treatment facility.

Subpart (2)(b)(iii) states that a single bed certification may be granted for a consumer in a psychiatric hospital. That is not the case here.

As a consequence, the only provision which would allow a single bed certification is under subpart (2)(b)(i). The Court previously held on January 19, 2016, that the consumer would not be ready for discharge within the next thirty days, was not going to get the necessary continuity of care and would not receive necessary treatment in that facility. Notwithstanding the Court's authority, the Evaluation and Treatment Center substituted its judgment for that of the Court, therefore stating that it was likely that the consumer could be remediated within thirty days. Those thirty days are the

same as the "maximum of thirty days" provided by the main section of that code provision.

As previously stated: services delayed are services denied. An evaluation and treatment Center may only use a single thirty day single bed certification on each case.

As testified by the Washington State Hospital Association, there is a marked difference in care received by a patient in a community hospital and one at Western State Hospital. It is clear that when community based hospitals house patients on single bed certifications they are disproportionately impacted in a negative manner: the hospital cannot take other patients more acutely in need, there is a negative impact on staff, individualized treatment for non-psychiatric patients is not as great as with psychiatric patients who only get the minimum level of care and other factors as testified.

Authority of Evaluation and Treatment Facility to provide long term care:

At the time of oral argument, it was conceded by the State that although there is a separate WAC provision authorizing certification for a facility to handle patients for longer periods of time, WAC 388-865-0500, there were, at that time, no evaluation and treatment facilities in Pierce County with that certification. However, since then, the letter of exemption (Exhibit 1) issued; but, seemingly, by its own terms, does not provide adequate legal authority to be dispositive.

This Court previously found that the use of consecutive single bed certifications is not lawful. The very language of the WAC is instructive: "...a maximum of thirty days...". This conclusion is urged by the Washington State Hospital Association.

DEFINING THE ISSUES:

It has been said that a successful involuntary treatment process is akin to a relay race. That is, each member of the team must successfully navigate their leg and make a successful pass of the baton to the next member of the team. This is true from the Designated Mental Health Professionals, the Community based Evaluation and Treatment facilities to the State Hospital and then back to the community based Behavioral Health Organizations. To be successful, no member of the team may refuse to accept the baton, hand the baton back or be confronted with needless obstacles. Each member must work both independently, and as a team, to achieve success.

The present issues presented by these consolidated cases show a dysfunctional relay team that is not working well individually or collectively. There are myriad arbitrary obstacles and the baton is not being smoothly passed from player to player. To this end, the court must facilitate the development of a seamless relay process. Only then can those most in need of long term mental health services properly receive that which the state has a duty and obligation to provide.

There are essentially four issues that must be addressed in order to address the problem:

1. Build, open and/or create and staff more facilities;
2. Decrease the number of those entering the long term care system;
3. Increase the number of those leaving the long term care system;
4. Some combination of the three factors above.

5. Decrease the number of admissions by the court declining to hear and decide matters which would result in a 90 or 180 day order to Western State Hospital.

1. New facilities: This is an issue that requires legislative leadership and cannot be resolved by the parties before this court;

2. Decrease the number of those entering the system--Admission: At hearing, Dr. Marylouise Jones testified that the State hospital had no information on incoming patients. Triage of those most needing care was a function of the referring BHO and that the hospital was essentially a passive partner in the process. The admissions by Western State Hospital are done with respect to an allocation system and a written policy. The admission policy is not an objectively based system designed to ferret out those most in need of long term treatment and does not necessarily reflect the needs of all participant BHOs. It is clear that all parties must design and implement an objectively independent assessment tool to facilitate admission to the state hospital. There must also be appropriate assessments in needed facility space and staff requirements on both an immediate and long term basis. The admission process must be designed with an eye to elimination of the wait list process.

3. Increase the number of those leaving the long term care system:

The state hospital maintains that it cannot admit more patients until there is necessary room for additional patients. To that end, the state hospital says that it is the function of the Behavioral Health Organizations and without their assistance, they

can do nothing. Again, the State says that it is a passive player in this aspect of the process. It was the testimony of the State hospital representative (Dr. MaryLouise Jones), that the cost of care for patients at Western State Hospital is between \$300 and \$500 per day. She also indicated that it took, on average, 176 days for someone to be released from the hospital after being placed on the active discharge list. At the lowest level of per diem cost that is the annual sum of \$52,800 incurred as a lost cost while a patient awaits discharge. For the 194 patients on the discharge list (Declaration of Dr. Marylouise Jones filed June 2, 2016 in Pierce County cause 16-6-00412-1), that amounts to a cumulative "waiting cost" of \$10,243,200.. Certainly not all of this can be a saved cost. But prompt and meaningful action by all parties could significantly impact this cost and free up additional space for patients. All systemic impediments to placement of patients to required outpatient long term care must be identified and removed. Processes such as a pre-release planning, multiple screenings by outside providers and cross system collaboration between providers and funding sources must be accomplished. In short, all unnecessary or artificial barriers to release must be identified and removed. This requires a collaborative process by all parties to the process: state hospital, all BHO's, collateral service providers such as DSHS Home and Community Services and other service providers. Necessarily development of a legislative agenda and drafting legislation designed to impact each concern will enable success.

4. Some combination of the foregoing: An appropriate mixture of newly

developed processes that identify and address all present shortcomings will best serve those who require long term care at Western State Hospital.

5. Decrease the number of admissions to Western State Hospital by having the court decline to hear and decide matters which would result in 90 or 180 day admissions to the hospital: It has been pointed out by various parties that this would subvert the involuntary treatment process and avoid the statutory duty of the court. However, to continue to sign orders placing patients at the state hospital who are left remaining in some other care does exactly that: it subverts the involuntary treatment process AND avoids the statutory duty of the State of Washington. Parties cannot have it both ways. If it is a duty of the courts, it is a duty of the State. Just as the court should not subvert the letter and intent of the law nor should the State of Washington.

Having identified the ultimate question, how does the Court facilitate this process and assure that all parties work toward meaningful and long needed reformation of the system? In structuring relief, this Court looks to available remedies:

Remedies Available to the court:

Our courts have been saying, for the past 35 years, that this is a problem of legislative proportion, see Pierce County Office of Involuntary Commitment v. Western State Hospital, supra. However, in spite of, or despite, legislative involvement, there has been no sufficient response for those requiring long term care.

Superior Courts have attempted to levy financial sanctions against the State of Washington. The vast bulk have gone unpaid, a small example is found in In re:

Detention of E.G., Pierce County cause 15-6-01417-0. Imprisonment is an available sanction but is to be used a last resort.

In a case of related dimension. the Washington State Department of Corrections refused to accept prisoners sent by Clark County. Clark County had to obtain writs of mandamus to compel the State of Washington to accept those whom they had a duty to accept. The State challenged that they were overcrowded and could not comply with the statutory mandate. The Court found that the word "shall" made mandatory the duty of the State and issued an order compelling the State of Washington to act. The court opined at page 449:

We are not insensitive to the problems of the Department. It carries a heavy responsibility and lacks the facilities necessary to perform all of its duties. It therefore can do only the best it can with the means at hand. However, we cannot find in the statutes any authority to pass on some of its responsibilities on to local authorities, without their agreement and without attendant compensation.

Of considerable note is the dissenting opinion of Justice Dolliver where he states, at page 451:

I believe all elements of the criminal justice system, including the courts, ought to work together to find solutions to these problems. Cooperation, coordination, communication and good faith action among State and local penal authorities is essential and should be encouraged by the courts.

It is this latter sentiment which guides the ultimate decision of this Court.

In order to craft an appropriate remedy and hasten a collaborative approach

designed to resolve the interconnected issues, but still require oversight and enforcement, this Court is requiring the following to occur. Direction is provided as to what is to be done and bolded parenthesis indicate time in which to be accomplished. All times are to be calculated from the appointment of the Special Master.

1. Adopt an achievable goal:

GOAL: Within 6 months from the date of this decision there shall be no more detentions for inpatient long term patients at anywhere other than the State Hospital or other facility certified for long term treatment and there shall be no more use of consecutive single bed certifications.

2. Appoint Special Master **[30 days]**

a). Has all necessary authority under mental illness laws of the State of Washington to have full and complete access to all records and information held by DSHS, the BHO's and other parties hereto;

b). reimbursement for any cost or expense by the State of Washington;

c). authority to convene parties or other interested participants to accomplish duties, goals and objectives set forth herein;

d). report, on a monthly basis, or as deemed appropriate, to the court, in order to assess and accomplish compliance with this Order

The parties (State of Washington, Department of Assigned Counsel, Optum and WSHA) are ordered to provide the Court with a joint recommendation (within the next 14 days) for an appropriately qualified expert to serve as Special Master/Monitor. If the parties cannot agree on a recommendation, the parties should each submit a list of at least two recommendations. Recommendations should include the name of the Special Master, assurance that the person is willing to so serve, and his or her current curriculum vitae. The Special Master/Monitor will be an agent of the court and be subject to its orders. Respondent, State of Washington/DSHS/Western State Hospital will be responsible for all reasonable costs and fees incurred by the Special Master. Once appointed, the Special Master shall establish an appropriate reporting schedule to the Court for compliance with the provisions of this Order.

3. Admission Standards

a). Design and implement an objectively based triage system to sort those on the Western State Hospital admission wait list by the acuity of the mental illness, current manifestations, needs for medications; needs for treatment in WSH hospital environment, BHO place of origin, amount of resources required by each admittee and other appropriate factors and in addition: **[120 days]**

i). Identify the number of beds available for entire current facility, including

number for each ward and number of beds available per ward; and per BHO allotment. Identify total number of beds that can be physically located on the campus of WSH as well as staffing needs for same; **[30 days]**

ii). Assess the allocation by all BHOs to review historical use of bed space, population of individual counties served by BHO and other factors to determine propriety of bed allocations; **[60 days]**

iii). If any wards are not fully opened or fully staffed, devise a plan for opening any such wards; **[90 days]**

iv). Produce a triage plan for review and comment by Special Master, BHO's, and court; **[90 days]**

v). Put a triage plan in effect after reviewing all comments; **[120 days]**

vi). Report on the implementation and effectiveness of the triage plan on a monthly basis to Special Master **[when Special Master is appointed]**

4. Eliminate the waiting list or those currently awaiting admission to WSH.

a). Develop a process for immediate compliance with goal

i). Formally notify all BHOs of plan to eliminate waiting list and in requesting their cooperation and participation; **[30 days]**

ii) Develop a process by which the BHO's are required to communicate with

each other and communicate with Western State Hospital and work cooperatively toward placement of patient(s) and shared allocations of reimbursements; **[60 days]**

iii). Provide a plan to get patients placed in the community or voluntarily admitted into appropriate housing or placement as soon as practicable; **[60 days]**

iv). Prepare a list of all waiting list cases organized by BHO and County and nature of bed needed (e.g.: geriatric care, etc.); **[30 days]**

iv). Initiate waiting list elimination effort; **[120 days]**

b) Develop a process for long term compliance with statute and case law **[90 days]**

5. Implement discharge of those patients on the active discharge list at Western State by developing a step down planning process similar to the PALS program previously run by WSH **[180 days]**

a). Duties of Western State Hospital:

i). Identify, as to each patient on active discharge list, origin of patients (home county, home BHO, etc.) **[30 days]**

ii). Identify, as to each patient on active discharge list, nature of patient need (Adult family home, group home, other placement) **[60 days]**

iii). Identify any less restrictive housing that could be accommodated on

campus of WSH; **[60 days]**

iv). Develop legislative agenda and plan for appropriate legislation, including but not limited to seeking funding or other legislative changes along with draft legislation all designed to achieve goal. **[120 days]**.

v). Report on level of spending done on targeted initiatives and provide full disclosure on any instances of underfunding or underspending on targeted issues. **[120 days]**

vi) Develop a plan to place certain patients in a more appropriate setting (i.e.: dementia patients and other patients that need more appropriate housing) **[120 days]**.

vi). Develop a proposal for a more immediate process for the approval of facilities with community support **[120 days]**

vii). Develop a plan for increasing and supporting the mental health task force. Plan must include methods by which employment in the mental health field can be incentivized or use greater levels of credentialed personnel. **[120 days]**

b). Duties of BHO's:

i). Identify resources for each patient's needs and what impediments exist to discharge; **[60 days]**

ii). Identify all necessary participants to discharge process (e.g.: DSHS Home

and Community Services, other service providers, etc). **[60 days]**

iii). Identify any other impediments to prompt and timely discharge of all patients on discharge list; **[60 days]**

iv). Assess concept of "pre-release" or "pre-discharge" lists and advance planning to facilitate less delay in discharge; **[90 days]**

c). Duties of both Western State Hospital and BHOs:

i). Produce a discharge plan for implementation; including, if necessary, a triage plan for discharge of certain patients on an expedited basis. This will include a plan of communication between WSH and all BHO's to improve discharge planning; **[90 days]**

ii). Put discharge plan into effect; **[120 days]**

iii). Report on effectiveness of discharge plan **[180 days]**

iv). Develop process by which long term compliance is achieved. **[180 days]**

6. Assessment of goal:

Western State Hospital shall report, every 60 days to the Special Master and to the Court on the progress toward reaching the goal and what impediments, if any, exist. At the end of 180 the parties shall file a joint report to the Special Master on what impediments remain and what additional time, if any, is required. The Special Master shall have the authority to recommend to the court

any further time needed or what other actions need to be taken by the Court to accomplish progress toward compliance with the stated goal.

The Pierce County Superior Court will retain jurisdiction over this matter and the Presiding Judge of the Pierce County Superior Court and his or her designee shall have the power and authority to make further orders consistent herewith in order to facilitate the goals and objectives set forth in this opinion. The court will consider whether appropriate and meaningful improvement is being achieved as well as progress toward achievement of the stated goal.

Respectfully submitted this 8th day of July, 2016.

Craig Adams

Court Commissioner