

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 REQUEST TO MODIFY CONSENT DECREE

On February 5, 2020, the Parties appeared before the Court at a Status Hearing for the purposes of assessing Defendant's compliance with the Consent Decree issued by the Court, and subsequently modified by the Parties. The Parties have recently modified the Consent Decree (Doc. 137), adding additional modifications designed to bring Defendant into compliance. While Defendants remain non-compliant with the terms of the Consent Decree, Defendant has been making some modest improvements in ensuring compliance with the timelines. Additionally,

some of the modifications contained in the Modified Consent Decree had only recently been operative such that it is unlikely that Defendant would have had time to meaningfully address non-compliance. The Court noted that the Plaintiffs, in the Joint Status Report (Doc. 142), had identified certain data deficiencies which were impacting a fulsome analysis of the extent of non-compliance pertaining to the reason why certain patients were not evaluated in the order in which they should have been seen. The Parties were requested to meet and confer about a resolution of this matter. The Parties met and agreed upon a modification to address this issue, which the Court requested the Parties to memorialize in writing. **Accordingly, the Parties jointly request the Court to Modify the Consent Decree to add the following items:**

1: On a monthly basis, the Defendants shall add to the Outpatient Waiting List already provided as part of the Monitoring data two additional data fields containing: a) the County of commitment; and b) a narrative explanation for any person whose evaluation or admission was taken out of numerical order. This new requirement begins in March, 2020.

2: Defendants shall create and provide to ADAP a detailed plan to ensure that Counties which do not contain a congregation of inmates requiring an outpatient evaluation are not indefinitely skipped in favor of Counties containing several inmates. Defendant has expressed a desire to evaluate all of the inmates in a given locale at one time, even if that means that some inmates who have been awaiting an evaluation for a longer period of time are not seen as a method to most expeditiously use valuable resources. However, Defendant may not ignore Counties where few inmates are present indefinitely. The purposes of the plan is to balance the benefit of doing all of the evaluation in a given County contemporaneously, even if that results in evaluations being taken out of order, against the need to ensure that all inmates receive timely evaluations.

The parties agree that the calculation of days to complete an evaluation shall be based upon the actual days required to evaluate the person, even if evaluated out of order, if the Defendant provides a narrative as to why the evaluations were performed out of order, and the narrative indicates that the primary reason was logistical efficiency or other good faith reasons. Defendants shall provide this plan to ADAP by no later than 90 days following the approval of this order.

3: Defendant shall notify the Court as soon as the position of Director of Forensic Mental Health Services has been filled.

Dated: February 14, 2020

Respectfully submitted,

/s/ Shandra N. Monterastelli

Shandra N. Monterastelli (ASB-1016-N00Q)

William Van Der Pol, Jr. (ASB-2112-114F)

Larry G. Canada (ASB-3153-N73L)

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: smonterastelli@adap.ua.edu

wvanderpoljr@adap.ua.edu

lcanada@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. Klinner

Thomas B. Klinner
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.alabama.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 14th day of January, 2020.

<p>Shandra N. Monterastelli William Van Der Pol, Jr. Larry G. Canada Lonnie J. Williams Alabama Disabilities Advocacy Program 500 Martha Parham West Box 870395 Tuscaloosa, AL 35487-0395 smonterastelli@adap.ua.edu wvanderpoljr@adap.ua.edu lcanada@adap.ua.edu lwilliams@adap.ua.edu</p>	<p>Thomas B. Klinner 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.alabama.gov</p>
<p>Henry F. (Hank) Sherrod III Henry F. Sherrod III, P.C. 119 South Court Street Florence, AL 35630 hank@alcivilrights.com</p>	
<p>Randall C. Marshall ACLU of Alabama Foundation P.O. Box 6179 Montgomery, AL 36106-0179 rmarshall@aclualabama.org</p>	

/s/ Shandra N. Monterastelli
 Shandra N. Monterastelli (ASB-1016-N00Q)
Counsel for Plaintiffs