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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 CASSIE CORDELL TRUEBLOOD, et
al.,

11 Plaintiffs,

12 v.

13 WASHINGTON STATE DEPARTMENT
14 OF SOCIAL AND HEALTH SERVICES,
et al.,

15 Defendants.
16

CASE NO. C14-1178-MJP

ORDER DENYING DEFENDANTS'
MOTION TO RECONSIDER
INJUNCTION REGARDING
TIMING OF SERVICES AND
INPATIENT EVALUATIONS

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

20 **Background**

21 On April 2, 2015, this Court imposed a multipart injunction that required Defendants to
22 cease violating class members' constitutional rights by providing timely competency services by,
23 among other things: (1) completing provision of in-jail competency evaluations within seven
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1 days of the signing of a court order, unless an extension is secured for clinical good cause, (2)
2 admitting those ordered to receive an in-hospital competency evaluation to a state hospital within
3 seven days of the signing of a court order, and (3) admitting those ordered to receive competency
4 restoration services to a state hospital within seven days of a court order. (Dkt. No. 131 at 21-
5 23.)

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

14 Although Defendants' appeal concerned only in-jail evaluations, Defendants now argue
15 that the logic and reasoning underlying the Ninth Circuit's opinion requires reevaluation of two
16 components of the injunction not relating to in-jail evaluations. (Dkt. No. 288.) First,
17 Defendants argue that the time limit for admission to a state hospital for inpatient evaluations
18 and restoration services should be calculated from the date Defendants receive the court order
19 and other necessary documentation, rather than the date the court order is signed. (Id. at 3-10.)
20 Second, Defendants argue the portion of the injunction relating to in-hospital evaluations should
21 be amended to require only that Defendants comply with state law, which requires admission
22 within fourteen days of receipt of the necessary documentation. (Id. at 5-12.)
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1 Plaintiffs oppose the Motion, arguing that it is time-barred and that nothing in the Ninth
2 Circuit’s opinion requires the revisions Defendants request. (Dkt. No. 291.)

3 Discussion

4 I. Timeliness of Motion

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

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

18 Considering the equitable principles underlying Fed. R. Civ. P. 60’s timing provision, the
19 Court finds it appropriate to consider the merits of Defendants’ Motion. While the Court finds
20 Defendants’ Motion timely under Fed. R. Civ. P. 60(c)(1), however, the Court finds Defendants
21 have failed to establish an entitlement to relief under Fed. R. Civ. P. 60(b) based on the Ninth
22 Circuit’s opinion in Trueblood v. Washington State Dep’t of Soc. & Health Servs., 822 F.3d
23 1037 (9th Cir. 2016).

1 II. Time Limit Begins at Date of Court Order

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

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

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

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

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

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

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

19 ¹ In arriving at these conclusions, the Court relies on testimony and evidence from trial and from
20 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.

21 ² To evaluate Defendants' request to modify the injunction, the Court must determine whether the
22 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
23 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
24 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

1 provides for a reasonable amount of time in which to transmit information, to arrange and
2 prepare for the transport of an individual from a jail to one of the two state hospitals, and to
3 complete the transport, each additional day of delay works against the interests of all Parties.

4 And, although class members awaiting in-hospital evaluations have some similarities with class
5 members awaiting in-jail evaluations, a number of key differences between the groups and their
6 situations, stemming from the legal framework provided by state law as it relates to the two
7 groups, necessitate different wait-time standards for the two groups:

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

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

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23 about the interests of class members and of the state at the competency evaluation stage, and about how
24 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.

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

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

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

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

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

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

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

1 | who are actually in need of hospitalization while receiving services, but that judges and
2 | evaluators, not DSHS administrators, should be the ones to make that determination.

3 | Accordingly, the Court must reject Defendants’ contention that people who receive in-hospital
4 | evaluations are “taking spots away from those who truly need treatment.” (Dkt. No. 288 at 12.)

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

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

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

9 **Conclusion**

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

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

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15 Dated this 19th day of August, 2016.

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18 Marsha J. Pechman
19 United States District Judge