

SUPREME COURT OF THE STATE OF WASHINGTON

SPOKANE COUNTY,

Petitioner,

v.

JILMA MENESES, In Her
Official Capacity as Secretary of
the Washington State Department
of Social and Health Services,

Respondent.

RESPONDENT'S
STATEMENT OF
ADDITIONAL
AUTHORITY

Pursuant to RAP 10.8, the Secretary offers as additional authority a Preliminary Injunction in a case filed by Spokane County and other counties, issued against the Department of Social and Health Services (DSHS) and the Secretary regarding the admission of civil conversion patients into state hospitals. *See Preliminary Injunction, filed Oct. 6, 2023, Pierce County, et al. v. Dep't of Soc. & Health Svcs., Pierce Co. Super. Ct. No. 23-2-09161-8 (attached).* As a plaintiff in that proceeding, Spokane County successfully argued it had standing under the Uniform

Declaratory Judgment Act (UDJA) to obtain an injunction requiring DSHS to admit civil conversion patients to state hospitals in accordance with statutory obligations.¹ *See* Preliminary Injunction at 3.

The Secretary believes (and unsuccessfully argued in Pierce County Superior Court) that Spokane County does not have standing to bring a UDJA claim regarding admission of patients to state hospitals. But having received the benefit of arguing that it may bring a UDJA claim on such issues, Spokane County should be judicially estopped from arguing the opposite here – i.e., that it has no alternative remedy to a mandamus. *See Arkison v. Ethan Allen, Inc.*, 160 Wn.2d 535, 538-39, 160 P.3d 13 (2007) (setting forth factors for judicial estoppel).

¹ Spokane County and the other plaintiffs argued in the alternative for mandamus, but the superior court granted an injunction under the UDJA. Preliminary Injunction at 5.

This additional authority is relevant to the Secretary's argument at pages 50 to 56 that the mandamus should be denied because there are alternative remedies.

This document contains 254 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 18th day of December, 2023.

ROBERT W. FERGUSON
Attorney General

s/ Peter B. Gonick
PETER B. GONICK, WSBA 25616
Deputy Solicitor General

OID No. 91087
PO Box 40100
1125 Washington Street SE
Olympia, WA 98504-0100
360-753-6245
Peter.Gonick@atg.wa.gov

Attorneys for State of Washington

CERTIFICATE OF SERVICE

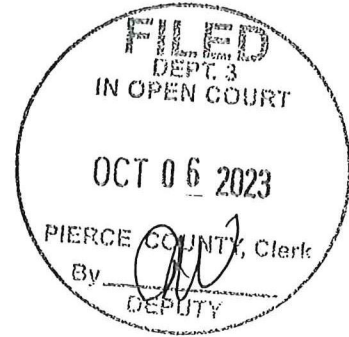
I certify, under penalty of perjury under the laws of the State of Washington, that the foregoing was electronically filed in the Washington State Supreme Court and electronically served on the following parties, according to the Court's protocols for electronic filing and service:

Nathan Scott McKorkle
Attorney at Law
1100 W. Mallon Avenue
Spokane, WA 99260-2043
nmckorkle@spokanecounty.org
scpaappeals@spokanecounty.org

DATED this 18th day of December 2023, at Olympia,
Washington.

s/ Kelsi Zweifel
KELSI ZWEIFEL
Confidential Secretary

EXHIBIT A



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

PIERCE COUNTY, ASOTIN COUNTY,
CLALLAM COUNTY, COWLITZ
COUNTY, DOUGLASS COUNTY,
GRANT COUNTY, GRAYS HARBOR
COUNTY, ISLAND COUNTY,
JEFFERSON COUNTY, KING
COUNTY, KITSAP COUNTY,
Klickitat County, LEWIS
COUNTY, LINCOLN COUNTY,
PACIFIC COUNTY, SKAGIT COUNTY,
SKAMANIA COUNTY, SNOHOMISH
COUNTY, SPOKANE COUNTY,
THURSTON COUNTY, WHATCOM
COUNTY, YAKIMA COUNTY, AND
WASHINGTON STATE ASSOCIATION
OF COUNTIES,

Plaintiffs,

v.

WASHINGTON STATE DEPARTMENT
OF SOCIAL AND HEALTH SERVICES,
and JILMA MENESES, in her official
capacity as SECRETARY OF
WASHINGTON STATE DEPARTMENT
OF SOCIAL AND HEALTH SERVICES,

Defendants.

No. 23-2-09161-8

ORDER GRANTING PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION OR WRIT OF
MANDAMUS

~~PROPOSED~~

This matter came before the Court on Plaintiffs' (the "Counties") Motion for Preliminary Injunction (the "Motion"). The Court has considered the Motion, any responses and replies thereto,

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MANDAMUS - 1

1 and the other pleadings and papers filed in this action. Based on the foregoing, the Court makes
2 the following Findings of Fact and Conclusions of Law.

3 **I. FINDINGS OF FACT**

4 1. Under Washington law, when the mental competency of a criminal defendant
5 cannot be restored, county superior courts are required to dismiss the defendant's charges
6 without prejudice and commit the former defendant to DSHS's custody to evaluate the patient
7 for potential civil commitment. Because the dismissal of criminal charges "converts" these
8 patients from a criminal hold to a civil commitment hold, they are referred to as "civil
9 conversion patients."

10
11 2. Between December 14, 2022 and July 7, 2023, DSHS selectively refused to admit
12 civil conversion patients for civil commitment evaluations under RCW 10.77.086(7). From July
13 7, 2023 to August 14, 2023, DSHS refused to admit all civil conversion patients for civil
14 commitment evaluations under RCW 10.77.086(7). Since August 14, 2023, DSHS has refused to
15 admit non-HB 1114 patients for civil commitment evaluations under RCW 10.77.086(7). Each
16 time DSHS refuses to do so, it is in violation of a superior court order, entered in the patient's
17 underlying criminal case, that requires DSHS to admit the patient to DSHS's custody in order to
18 perform a civil commitment evaluation.

19
20 3. Rather than admit civil conversion patients for evaluation, DSHS recommends
21 that county and local officials subsume DSHS's statutory obligations by evaluating patients
22 under the Involuntary Treatment Act, chapter 71.05 RCW. However the county and local
23 officials lack adequate resources to evaluate and care for these patients, and the commitment
24 criteria available to them is not appropriate for the needs of the conversion patient population
25 and public safety. As a result, DSHS's refusal to admit civil conversion patients for evaluation is
26

1 likely to result in the outright release of civil conversion patients into their communities without
2 any evaluation of whether the patients are likely to commit new criminal offenses, or whether
3 they present a danger to themselves or others. DSHS's conduct deprives civil conversion patients
4 of the treatment that is often necessary to break the cycle of re-offense.

5
6 4. DSHS' failure to evaluate civil conversion patients is likely to result in substantial
7 harm to the patients themselves, the communities to which they return, and to the county and
8 local governments responsible for ensuring public safety, enforcing the law, and evaluating and
9 caring for individuals with mental disabilities that make them eligible for civil commitment.

10 5. DSHS has also sent letters to County officials stating its intention to release
11 patients currently undergoing civil conversion treatment back to their communities. These
12 notices provide incomplete and insufficient information by, for example, failing to provide
13 specific information about the individuals being released, or their release location or plan for
14 release. The DSHS-issued notices are not addressed to the individuals enumerated in RCW
15 71.05.425 to whom DSHS is required to provide written notice.

16
17 6. DSHS's release of patients undergoing civil commitment treatment without
18 complying with RCW 71.05.425's notice requirements creates a substantial likelihood of serious
19 harm to the communities, victims, local governments and officials implicated by the patients'
20 release.

21 22 **II. CONCLUSIONS OF LAW**

23 1. The Counties having standing to bring this action and are beneficially interested
24 in DSHS' performance of its statutory obligations.

25 2. The Counties have demonstrated that they are likely to succeed on the merits of
26 their claims.

27 3. DSHS is obligated to admit civil conversion patients for civil commitment

1 evaluations under RCW 10.77.086(7), and to comply with superior court orders committing civil
2 conversion patients into DSHS' custody for evaluation under that statute.

3 4. The July 7, 2023 federal court contempt order in the action titled *Trueblood v.*
4 *Washington State Dep't of Soc. & Health Servs.*, Case No. 14-cv-1178-MJP in the U.S. District
5 Court for the Western District of Washington, does not (in either its original or amended form)
6 conflict with or override DSHS's obligation to admit patients to the state hospitals for a civil
7 conversion evaluation. Even if it did, DSHS would still be required under RCW 10.77.086 to
8 admit patients for this purpose to other DSHS-operated or contracted facilities. Although DSHS
9 has discretion where to place patients in-patient for an evaluation, it nonetheless has a mandatory
10 duty to admit conversion patients to its custody for purposes of an evaluation.

11 5. When DSHS intends to release, transfer or grant authorized leave to patients who
12 have been civilly committed following dismissal of sex, violent, or felony harassment charges
13 ("Committed Patients"), DSHS must "at the earliest possible date, and in no event later than
14 thirty days before [the release, leave or transfer], the superintendent shall send written notice of
15 [the release, leave, or transfer] to" certain individuals enumerated in RCW 71.05.425. A legally
16 sufficient notice must include the person's name, anticipated release date (at least 30 days out)
17 and the location of or plan for the person's release.

18 6. DSHS has a clear duty to act by performing these statutory obligations.

19 7. The Counties have a clear legal and equitable right to compel DSHS to satisfy
20 these statutory obligations.

21 8. The Counties have a well-grounded fear of the immediate invasion of this right.

22 9. DSHS' continuing failure to satisfy its statutory evaluation and notice obligations
23 will result in actual and substantial injury to the Counties, the civil conversion patients, and the
24 communities they are released into.

25 10. There is no adequate remedy at law for the actual and substantial damages
26 resulting from DSHS's conduct. Absent injunctive relief there is no plain, speedy and adequate

1 remedy in the ordinary course of law.

2 11. The balance of equities favors the Counties because of the damages and public
3 safety risks caused by DSHS' conduct, and because DSHS has no valid interest in failing to
4 perform its statutory obligations.

5 12. Minimal security is required to protect DSHS' interest in disregarding its statutory
6 obligations.

7 13. Although the court determines to grant a preliminary injunction, it would
8 otherwise determine to grant the alternative relief of a writ of mandamus.
9

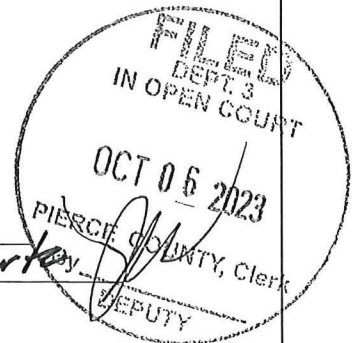
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11
12 **III. ORDER**

13 It is now, therefore, ORDERED as follows:

- 14 1. The Counties' Motion for Preliminary Injunction is GRANTED;
- 15 2. DSHS is enjoined from denying admission to, or declining to accept custody of,
16 civil conversion patients pursuant to RCW 10.77.086(7) and criminal court orders pursuant to
17 that statute; and
- 18 3. DSHS is enjoined from releasing, transferring, or granting leave to authorized
19 leave to Committed Patients without until at least 30 days after it has sent written notice to the
20 individuals enumerated in RCW 71.05.425 that includes the name of the releasing patient and the
21 location of or plan for the patient's release.

22
23 IT IS SO ORDERED this 6 day of Oct., 2023.

24 M. A. Schwartz
25 HONORABLE M. Schwartz
26 DEPUTY



27 Presented by:

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/s/ Paul J. Lawrence
Paul J. Lawrence, WSBA #13557
Ian D. Rogers, WSBA #46584
Shweta Jayawardhan, WSBA #58490
*Attorneys for Plaintiff Washington
State Association of Counties*

SOLICITOR GENERAL OFFICE

December 18, 2023 - 9:51 AM

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Filing on Behalf of: Peter B. Gonick - Email: peter.gonick@atg.wa.gov (Alternate Email: SGOOlyEF@atg.wa.gov)

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PO Box 40100
1125 Washington St SE
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Phone: (360) 570-3411

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