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Subject: Motion and proposed order in 3AN-18-0914CI
Date: 5/6/2020 11:30:40 AM

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

THE DISABILITY LAW CENTER)
OF ALASKA, INC.,)

Plaintiff,)

v.)

STATE OF ALASKA; DEPARTMENT)
OF HEALTH AND SOCIAL)
SERVICES; JAY BUTLER as)
Commissioner of the Department of)
Health and Social Services, in his)
official capacity; DIVISION OF)
BEHAVIORAL HEALTH; Gennifer)
Moreau-Johnson, in her official capacity)
as Acting Director of the Division of)
Behavioral Health; and ALASKA)
PSYCHIATRIC INSTITUTE; DUANE)
MAYES as Chief Executive Officer, in)
his official capacity,)

Defendants.)

Case No. 3AN-18-9814 CI

FILED in the Trial Courts
State of Alaska Third District
MAY 06 2020
By _____ Clerk of the Trial Courts
Deputy

DLC'S MOTION FOR DECLARATORY AND PRELIMINARY INJUNCTIVE
RELIEF REGARDING UNLAWFUL JAILING

COMES NOW, the Plaintiff, the Disability Law Center of Alaska, and hereby moves for a declaratory order and preliminary injunction to require compliance with this Court's order dated October 21, 2019, as it relates to respondents held in correctional facilities, while this case is pending final resolution. This motion is necessary because defendant DHSS' January 21, 2020, filing entitled *Addressing Gaps in the Crisis Psychiatric Response System*

("the Proposed Plan"), patently fails to fulfil this Court's order regarding respondents held in correctional facilities.

In an Order dated October 21, 2019, this Court found that defendant DHSS is not fulfilling its obligations to provide timely evaluations and treatment to respondents as required by AS 47.30.700-.725, nor meeting its obligations under *Gabriel C.* to immediately transport respondents to the nearest evaluation and treatment facility. As a result, this Court found that respondents are suffering ongoing irreparable harm and that, for those held in the punitive conditions of correctional facilities, DHSS' actions and inactions violate the due process rights of respondents.¹ The Court therefore ordered DHSS to propose a plan to remedy these violations. Specifically, regarding respondents held in correctional facilities, the Order states, and requires DHSS's plan to demonstrate:

The population of civil detainees in a DOC facility can be divided into two groups: (a) persons subject to an evaluation order that DOC obtained while the person was in DOC custody, (b) persons subject to an evaluation order who were brought to DOC because an evaluation facility was unable to admit them and there were no criminal charges pending.

For the first group DHSS shall demonstrate a procedure whereby members of the group remain at the DOC facility for no more than 24 hours after criminal charges were dismissed. For the second group, DHSS shall demonstrate a procedure whereby members do not go to a DOC facility, except in the rarest circumstances (and providing guidelines concerning those circumstances).

Regarding respondents in 'group a,' those subject to an evaluation order that DOC obtained while the person was in DOC custody, the Proposed Plan asserts that DHSS "cannot guarantee that every person in protective custody can or will be released within 24 hours."²

¹ Order at 53.

² Proposed Plan at 19.

For those in 'group b,' those brought to DOC because an evaluation facility was unable to admit them, the Proposed Plan states DHSS "cannot prevent law enforcement from transporting individuals to DOC."³

On February 11, 2020, DLC filed a response to the Proposed Plan objecting to, among other things, DHSS' refusal to prevent unlawful correctional facility boarding.⁴ To date, defendant DHSS remains out of compliance with this part of the Court's seminal order in this case.

Plaintiff therefore seeks an order:

1. Declaring that DHSS' Proposed Plan does not comply with the Court's order because it fails to demonstrate a procedure whereby:

- a. persons subject to an evaluation order that DOC obtained while the person was in DOC custody, remain at the DOC facility for no more than 24 hours after criminal charges have been dismissed; and
- b. persons subject to an evaluation order obtained while the person was outside DOC custody do not go to a DOC facility, except in the rarest circumstances (and providing guidelines concerning those circumstances).

2. Granting a preliminary injunction requiring DHSS to ensure, while this case is pending, that persons subject to an evaluation order that DOC obtained while the person

³ Proposed Plan at 19.

⁴ DLC's Response to DHSS' Proposed Plan, at 3-7.

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was in DOC custody, remain at the DOC facility for no more than 24 hours after criminal charges have been dismissed; and that persons subject to an evaluation order obtained while the person was outside DOC custody do not go to a DOC facility, except in the rarest circumstances (and providing guidelines concerning those circumstances), and

3. Requiring defendant DHSS to file reports immediately notifying the Court of any possible violations of the preliminary injunction set forth above during pendency of this case.

This proposal simply asks the Court to convert the requirements it directed DHSS and DOC to incorporate into the State's Plan into direct orders to the agencies. To the extent DHSS and DOC seek to add conditions to the Court's order, they may propose those conditions in their response to this Motion, but DLC respectfully submits that months have passed since the agencies proposed their Plan and the Order's basic requirements have not yet been fulfilled. It is time to conclude this part of the case with a declaration, and preliminary injunction to be in effect during the pendency of the rest of the case, that keeping people in jail awaiting civil commitment evaluations is wrong.

Dated: May 6, 2020.

Respectfully submitted,



Disability Law Center of Alaska
Joanna L. Cahoon (ABA #1405034)
Mark Regan (ABA #8409081)

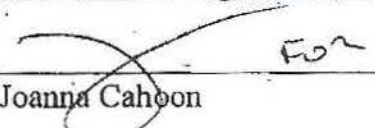
Certificate of Service

The undersigned certifies that the foregoing document was served by U.S. MAIL and ELECTRONIC MAIL on this 6th day of May 2020.

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