

August 23 2023 8:30 AM

CONSTANCE R. WHITE  
COUNTY CLERK  
NO: 23-2-09161-8

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

PIERCE COUNTY, ASOTIN COUNTY,  
CLALLAM COUNTY, COWLITZ  
COUNTY, DOUGLAS 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 MENESSES, in her official  
capacity as SECRETARY OF  
WASHINGTON STATE DEPARTMENT  
OF SOCIAL AND HEALTH SERVICES,

Defendants.

No.

COMPLAINT FOR  
DECLARATORY JUDGMENT,  
INJUNCTIVE RELIEF, AND WRIT  
OF MANDAMUS

## I. INTRODUCTION

1. Our constitutional system expects, and requires executive branch officials to follow statutes and court orders. The Department of Social and Health Services (“DSHS”) is failing this fundamental obligation by refusing to provide mental health services to conversion patients. By ignoring the dictates of the legislative and judicial branches, DSHS is depriving a particularly at-risk population of the opportunity for necessary mental health treatment to the detriment of both patient well-being and community safety. In the face of DSHS’s continuing contempt for both legislative and judicial authority, Washington’s counties have joined in an unprecedented coalition to enforce DSHS’s legal obligations.

2. The Washington State Association of Counties and its members, Asotin County, Clallam County, Cowlitz County, Douglas County, Grant County, Grays Harbor County, Island County, Jefferson County, King County, Pierce 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 (collectively, the “Counties”), which together represent more than 6 million Washington residents, have a substantial interest in proper and effective operation of both Washington’s criminal justice system and its mental health care system.

3. When the mental competency of a criminal defendant cannot be restored, county superior courts dismiss the defendant's charges without prejudice and must commit the former defendant to DSHS custody to evaluate the patient for potential civil commitment. Because the dismissal of criminal charges "converts" these patients from a criminal hold to a civil commitment hold, they are referred to as "civil conversion patients."

1       4.     DSHS has conceded that state law requires it to admit civil conversion patients for  
2 evaluations in order to determine whether additional civil commitment is warranted.

3       5.     In each case, DSHS's obligation to conduct an evaluation is ordered by the  
4 Superior Court.

5       6.     Nonetheless, DSHS has selectively refused admission to civil conversion patients  
6 since at least December 2022 and, on information and belief, has refused to admit any civil  
7 conversion patients for statutorily required civil commitment evaluations since July 13, 2023.

8       7.     In addition, Washington law requires that DSHS provide written notice to specific  
9 law enforcement officials, prosecutors, victims and other interested parties at least 30 days  
10 before it releases certain civil conversion patients back to their communities following treatment.  
11 This notice is essential to ensuring the safety and well-being of both the patients and their  
12 communities.

13       8.     However, DSHS has recently stated its intention to release these individuals  
14 without complying with its statutory notice requirements.

15       9.     DSHS's statutory violations deny conversion patients necessary mental health  
16 treatment and impede public safety throughout the Counties. Accordingly, Plaintiffs seek  
17 declaratory and injunctive relief against DSHS or a writ of mandamus to: (1) declare DSHS'  
18 refusal to admit patients for statutorily required civil conversion evaluations a violation of RCW  
19 10.77.086 and direct DSHS to admit patients for the required evaluations; and (2) declare  
20 DSHS's release of civilly committed conversion patients without proper notice a violation of  
21 RCW 71.05.425 and direct DSHS to comply with its statutory notice obligations before releasing  
22 any such patients.

## II. PARTIES

10. Plaintiff Washington State Association of Counties (“WSAC”) is a voluntary, non-profit association that represents the interests of all of Washington State’s 39 counties. Established in 1906, WSAC provides a variety of services to its member counties, including advocating for their interests, conducting training and workshops, facilitating the development and sharing of best practices, and promoting and lobbying for legislation and policy that advances the interests of its members. As a representative of counties across Washington, WSAC has an interest in ensuring that DSHS meet its statutory obligation to admit conversion patients for evaluations to determine the need for further civil commitment and treatment. WSAC also has an interest in ensuring that counties are not wrongfully burdened with civil conversion evaluation costs and responsibility, when they do not have the authority and means necessary to furnish such services.

11. Plaintiff Asotin County is a political subdivision of the State of Washington and has a population of approximately 22,362 residents. Asotin County operates the Asotin County Superior Court.

12. Plaintiff Clallam County is a political subdivision of the State of Washington and has a population of approximately 77,805 residents. Clallam County operates the Clallam County Superior Court.

13. Plaintiff Cowlitz County is a political subdivision of the State of Washington and has a population of approximately 111,524 residents. Cowlitz County operates the Cowlitz County Superior Court.

1       14. Plaintiff Douglas County is a political subdivision of the State of Washington and  
2 has a population of approximately 43,696 residents. Douglas County operates the Douglas  
3 County Superior Court.

4       15. Plaintiff Grant County is a political subdivision of the State of Washington and  
5 has a population of approximately 100,297 residents. Grant County operates the Grant County  
6 Superior Court.

7       16. Plaintiff Grays Harbor County is a political subdivision of the State of  
8 Washington and has a population of approximately 76,841 residents. Grays Harbor County  
9 operates the Grays Harbor County Superior Court.

10       17. Plaintiff Island County is a political subdivision of the State of Washington and  
11 has a population of approximately 87,432 residents. Island County operates the Island County  
12 Superior Court.

13       18. Plaintiff Jefferson County is a political subdivision of the State of Washington  
14 and has a population of approximately 33,605 residents. Jefferson County operates the Jefferson  
15 County Superior Court.

16       19. Plaintiff King County is a home rule charter county organized under the  
17 provisions of the Washington Constitution and has a population of approximately 2.2 million  
18 residents. Like all Washington counties listed herein, it provides substantial funding to the  
19 criminal justice system, which includes the superior courts, the prosecuting attorney, public  
20 defenders, the sheriff, and the county jail. Like all counties listed herein, King County operates  
21 and/or funds the civil commitment process under Washington's Involuntary Treatment Act,  
22 including Designated Crisis Responders ("DCRs").

1       20. Plaintiff Kitsap County is a political subdivision of the State of Washington and  
2 has a population of approximately 274,314 residents. Kitsap County operates the Kitsap County  
3 Superior Court.

4       21. Plaintiff Klickitat County is a political subdivision of the State of Washington and  
5 has a population of approximately 23,271 residents. Klickitat County operates the Klickitat  
6 County Superior Court.

7       22. Plaintiff Lewis County is a political subdivision of the State of Washington and  
8 has a population of approximately 84,398 residents. Lewis County operates the Lewis County  
9 Superior Court.

10       23. Plaintiff Lincoln County is a political subdivision of the State of Washington and  
11 has a population of approximately 10,570 residents. Lincoln County operates the Lincoln County  
12 Superior Court.

13       24. Plaintiff Pacific County is a political subdivision of the State of Washington and  
14 has a population of approximately 23,948 residents. Pacific County operates the Pacific County  
15 Superior Court.

16       25. Plaintiff Pierce County is a home rule charter county organized under the  
17 provisions of the Washington Constitution and has a population of approximately 925,700  
18 residents.

19       26. Plaintiff Skagit County is a political subdivision of the State of Washington and  
20 has a population of approximately 131,179 residents. Skagit County operates the Skagit County  
21 Superior Court.

1       27. Plaintiff Skamania County is a political subdivision of the State of Washington  
2 and has a population of approximately 12,170 residents. Skamania County operates the  
3 Skamania County Superior Court.

4       28. Plaintiff Snohomish County is a home rule charter county organized under the  
5 provisions of the Washington Constitution and has a population of approximately 833,500  
6 residents.

7       29. Plaintiff Spokane County is a political subdivision of the State of Washington and  
8 has a population of approximately 549,690 residents. Lewis County operates the Lewis County  
9 Superior Court.

10       30. Plaintiff Thurston County is a political subdivision of the State of Washington and  
11 has a population of approximately 297,977 residents. Thurston County operates the Thurston  
12 County Superior Court.

13       31. Plaintiff Whatcom County is a home rule charter county organized under the  
14 provisions of the Washington Constitution and has a population of approximately 228,831  
15 residents. Whatcom County operates the Whatcom County Superior Court.

16       32. Plaintiff Yakima County is a political subdivision of the State of Washington and  
17 has a population of approximately 256,035 residents. Yakima County operates the Yakima  
18 County Superior Court.

19       33. Defendant Washington State Department of Social and Health Services (“DSHS”)  
20 is a governmental agency of the State of Washington. DSHS’ Behavioral Health Administration  
21 is responsible for the management of Washington’s civil commitment and adult forensic mental  
22 health care system. It is responsible for providing competency evaluation and restoration  
23 services, as well as evaluations for civil conversion commitment.

34. Defendant Jilma Meneses is a resident of Washington, and the Secretary of DSHS.

### III. JURISDICTION AND VENUE

35. This Court has jurisdiction over this matter pursuant to chapter 2.08 RCW, chapter 7.16 RCW, chapter 7.24 RCW, and chapter 7.40 RCW.

36. Venue is proper in this Court under RCW 4.92.010.

## IV. STANDING

37. The Counties have standing to challenge DSHS's failure to comply with its statutory obligations to evaluate civil conversion patients for potential civil commitment and provide adequate notice before releasing civilly committed patients back to their communities.

38. WSAC has standing to bring suit on behalf of its member counties because its members would otherwise have standing to sue in their own right, the interests WSAC seeks to protect are germane to its purpose of protecting and advancing the interests of all of Washington State's 39 counties, and neither the claim asserted nor the relief requested requires participation of individual counties in the lawsuit.

39. The Counties have each suffered an injury in fact due to the DSHS's failure to comply with its statutory obligations.

40. This Court's grant of declaratory and injunctive relief or a writ of mandamus will redress directly the harms caused to Plaintiffs by DSHS's violations of RCW 10.77.086 and RCW 71.05.425.

## **V. STATEMENT OF FACTS**

## A. The Civil Conversion Process

41. Under RCW 10.77.086(5), whenever a superior court dismisses felony criminal charges because a defendant's competency cannot be restored, the court is required to order that the former defendant be referred to DSHS for a mental health evaluation.

42. DSHS is mandated by law and court order to accept these civil conversion patients for periods of up to 120-hours of evaluation. During these evaluations, DSHS must determine based on a thorough review of the patient's history and observation of the patient, whether to pursue an additional civil conversion commitment for treatment. By petition and affidavit, DSHS may seek additional 180-day periods of inpatient treatment followed by conditional release to a supportive less restrictive environment.

43. DSHS's mental health treatment of conversion patients and its supportive release of those patients following treatment is effective in reducing recidivism.

44. From at least September 2022 through March 2023, DSHS removed beds from and closed wards at Western State Hospital, long before replacement bed space was available, resulting in a decrease in capacity to perform its statutory obligations, including its obligation to evaluate civil conversion patients.

45. On December 14, 2022, DSHS Assistant Secretary Bovenkamp issued a policy memorandum titled “Hospital Admission Triaging,” (“Memorandum”) informing counties and others that it would no longer comply with RCW 10.77.086(5) or superior court orders to admit conversion patients for evaluation commitments. Instead, DSHS asserted its alleged authority to “triage” which conversion patients it would accept, and stated it would provide “timely notice” when rejecting a conversion patient for admission.

1       46. The Counties did not receive notice of this policy change prior to its  
2 implementation, nor were they consulted by the DSHS.

3       47. Immediately after issuing the Memorandum, DSHS began refusing to admit some  
4 civil conversion patients for evaluation, and instead recommended that counties reach out to  
5 local county-funded DCRs in order to assess the patients for possible civil detention at a local  
6 facility.

7       48. For example, on December 7, 2022, the King County Superior Court ordered  
8 DSHS in Case No. 22-1-04244-0 SEA to admit Michael Charles Holland for a 120 hour civil  
9 conversion evaluation.<sup>1</sup> The court's order was issued on a standard form used statewide for the  
10 purpose of dismissing felony charges and directing a conversion commitment evaluation.

11       49. Despite the Superior Court order, on December 14, 2022, DSHS refused to admit  
12 Mr. Holland for a conversion commitment evaluation. With DSHS represented and present in the  
13 courtroom, the Superior Court entered an order clarifying that its prior order "mandates and  
14 directs" DSHS to admit the patient for a 120-hour evaluation. *State v. Holland*, No. 22-1-04244-  
15 0 SEA (December 16, 2022). It ordered DSHS to admit Mr. Holland by no later than December  
16 21, 2022. *Id.* DSHS again ignored and violated the court's order by refusing to admit Holland for  
17 an evaluation.

18       50. The Counties have received numerous letters from DSHS denying admission to  
19 civil conversion patients under this "triage" policy. These letters were sent by DSHS from  
20 Western State Hospital, which is located in Pierce County, Washington.

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<sup>1</sup> Mr. Holland's criminal charges were dismissed because DSHS has failed in its statutory and constitutional obligation to offer timely competency restoration services.

1       51. In a letter dated January 12, 2023, the Washington Superior Court Judges'  
2 Association ("SCJA") expressed to DSHS that the agency's policy change "may worsen  
3 Washington State's public safety crisis" and "contributes substantially to a scenario in which  
4 individuals requiring clinical treatment are released with no accountability for criminal, often  
5 violent, behavior." "The SCJA urge[d] the Department to rescind the memorandum released on  
6 December 14, 2022 and meet its obligations" under Chapter 10.77 RCW. DSHS did not revise its  
7 triage policy to comply with statute and court order.

9       52. On July 7, 2023, in *A.B. by & through Trueblood v. Washington State Dep't of*  
10 *Soc. & Health Servs.*, Case No. 2:14-cv-1178 (U.S.D.C. WD WA), the U.S. District Court for the  
11 Western District of Washington issued an order (the "*Trueblood Order*") ruling that DSHS  
12 breached its duty owed a class of pre-trial detainees by failing to provide timely competency and  
13 restoration services in violation of the detainees' Fourth Amendment Rights, and in violation of a  
14 settlement agreement DSHS had previously entered with the plaintiff class.

16       53. As part of its relief, the federal court ordered that DSHS "shall immediately cease  
17 admitting Civil Conversion patients to the state hospitals for ordered civil commitment  
18 treatment." Although the *Trueblood Order* was limited to long-term treatment admissions, did  
19 not impact short-term evaluation admissions, and had no applicability to other DSHS operated or  
20 contracted facilities, DSHS immediately began citing the *Trueblood Order* as a basis to decline  
21 providing mental health evaluations to *all* civil conversion patients.

23       54. On or about July 13, 2023, DSHS sent a letter informing King County that it  
24 could not conduct evaluations of former criminal defendants, purportedly due to the *Trueblood*  
25 Order. Since then, it has issued similar notifications to other counties. This letter was, again, sent  
26 by DSHS from Western State Hospital, which is located in Pierce County, Washington. On  
27

1 information and belief, DSHS has not admitted any civil conversion patients for evaluation since  
2 that date.

3 55. DSHS's refusal to perform its legal duty to evaluate civil conversion patients  
4 deprives these patients of care they are statutorily entitled to, precludes any evaluation of  
5 whether the patients are likely to recommit potentially serious and violent offenses as a result of  
6 a mental health disorder, and risks returning these individuals to communities where they may  
7 pose a risk to themselves and others.

8 56. DSHS has also improperly sought to shift the burden and expense of its own  
9 statutory obligations to the Counties, which would require the diversion of critical resources  
10 from other essential needs. Because the conversion commitment statutes are available only to  
11 DSHS, conversion commitment patients are denied necessary mental health treatment and public  
12 safety is negatively impacted.

13 **B. DSHS's Notice Requirements**

14 57. When DSHS intends to release, transfer or grant authorized leave to patients who  
15 have been civilly committed following dismissal of sex, violent, or felony harassment charges  
16 ("Committed Patients"), DSHS must "at the earliest possible date, and in no event later than  
17 thirty days before [the release, leave or transfer] . . . send written notice of [the release, leave, or  
18 transfer] to the following: (i) The chief of police of the city, if any, in which the person will  
19 reside; (ii) The sheriff of the county in which the person will reside; and (iii) The prosecuting  
20 attorney of the county in which the criminal charges against the committed person were  
21 dismissed." RCW 71.05.425(1)(a).

22 58. In addition, on request, DSHS must also provide notice to: "(i) The victim of the  
23 sex, violent, or felony harassment offense that was dismissed . . . or the victim's next of kin if the  
24

1 crime was a homicide; (ii) Any witnesses who testified against the person in any court  
2 proceedings; (iii) Any person specified in writing by the prosecuting attorney. . . ; and (iv) The  
3 chief of police of the city, if any, and the sheriff of the county, if any, which had jurisdiction of  
4 the person on the date of the applicable offense.” RCW 71.05.425(1)(b).

5 59. On or around August 2, 2023, DSHS began sending letters without any specific  
6 address or recipients, and directed only to “Prosecutor, Washington Association of Sheriffs and  
7 Police Chiefs (WASPC), and county law enforcement agencies” stating that it would be releasing  
8 certain Committed Patients “by September 7, 2023.”

9 10 60. DSHS’s letters did not comply with the notice requirements of RCW 71.05.425—  
11 a fact DSHS’s letters concede by stating that DSHS “expect[s] to return to routine notification  
12 process after these discharges are completed in September.”

## 13 VI. CAUSES OF ACTION

### 14 A. FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT

15 61. Plaintiffs repeat and re-allege each of the foregoing allegations as though fully set  
16 forth herein.

17 62. For reasons including but not limited to those stated in this Complaint, an actual  
18 dispute exists between Plaintiffs and DSHS, which parties have genuine and opposing interests,  
19 which interests are direct and substantial, and of which dispute a judicial determination would be  
20 final and conclusive.

21 63. This matter raises important questions about the State’s duty to civil conversion  
22 patients and their communities, and a judicial opinion will benefit the public, other branches of  
23 government, and counties across Washington.

1       64. Plaintiffs will suffer immediate damage and harm if DSHS's existing refusal to  
2 accept and conduct civil conversion evaluations is not declared a violation Chapter 10.77 RCW.  
3

4       65. Plaintiffs will further suffer immediate damage and harm if DSHS's failure to  
5 comply with the statutory notice requirements for the release Committed Patients is not declared  
6 a violation of RCW 71.05.425.  
7

8       66. Plaintiffs are, therefore, entitled to a declaratory judgment that state law and  
9 related court-orders require DSHS to: (1) accept civil conversion patients for civil commitment  
10 evaluations; and (2) comply with RCW 71.05.425's notice requirements prior to releasing,  
11 transferring, or granting leave to Committed Patients, as well as such other and further relief as  
12 may follow from the entry of such a declaratory judgment.  
13

**B. SECOND CAUSE OF ACTION: INJUNCTIVE RELIEF**

14       67. Plaintiffs repeat and re-allege each of the foregoing allegations as though fully  
15 set forth herein.  
16

17       68. Plaintiffs have clear legal rights to ensure that DSHS fully meets its statutory  
18 obligation to evaluate civil conversion patients and provide notice prior to the release, transfer, or  
19 grant of leave to Committed Patients. Plaintiffs have a well-grounded fear of immediate invasion  
20 of those rights by the State, which invasion will result in actual and continuing injury. No  
21 adequate remedy at law exists to remedy this invasion of Plaintiffs' rights.  
22

23       69. Plaintiffs are, therefore, entitled to an injunction requiring DSHS to: (1) accept  
24 civil conversion patients for civil commitment evaluations; and (2) comply with RCW  
25 71.05.425's notice requirements prior to releasing, transferring, or granting leave to Committed  
26 Patients.  
27

### **C. THIRD ALTERNATIVE CAUSE OF ACTION: PETITION FOR WRIT OF MANDAMUS**

70. Plaintiffs repeat and re-allege each of the foregoing allegations as though fully set forth herein.

71. A Writ of Mandamus is available “to compel the performance of an act which the law especially enjoins as a duty,” when there is no “plain, speedy, and adequate remedy in the ordinary course of law.” RCW 7.16.160, .170.

72. DSHS has a statutory duty, enforced by court order, to evaluate civil conversion patients.

73. DSHS has a statutory duty to provide notice to specific law enforcement officials, prosecutors, and community members prior to releasing, transferring, or granting leave to Committed Patients.

74. Plaintiffs are beneficially interested in DSHS's performance of these obligations.

75. If the Court finds it may not issue an injunction, Plaintiffs are in the alternative entitled to a writ of mandamus compelling DSHS to perform evaluations of civil conversion patients and comply with its notice obligations

76. Plaintiffs are, therefore, entitled to writ of mandamus requiring DSHS to: (1) accept civil conversion patients for civil commitment evaluations; and (2) comply with RCW 71.05.425's notice requirements prior to releasing, transferring, or granting leave to Committed Patients.

## VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

A. That the Court enter an order declaring that:

1 a. DSHS's refusal to accept and conduct civil conversion evaluations violates  
2 RCW 10.77.086 and enforcing court orders; and  
3 b. DSHS's failure to provide adequate notice prior to releasing, transferring, or  
4 granting leave to Committed Patients violates RCW 71.05.425;

5 B. That the Court enter an injunction requiring DSHS to:  
6 a. accept civil conversion patients for civil commitment evaluations; and  
7 b. comply with RCW 71.05.425's notice requirements prior to releasing,  
8 transferring, or granting leave to Committed Patients.

9 C. That the Court in the alternative to entering an injunction, issue a writ of  
10 mandamus compelling DSHS to:  
11 a. accept civil conversion patients for civil commitment evaluations; and  
12 b. comply with RCW 71.05.425's notice requirements prior to releasing,  
13 transferring, or granting leave to Committed Patients.

14 D. An award of reasonable attorney fees, expenses and costs, to the fullest extent  
15 allowed by law and equity;

16 E. For leave to amend pleadings as justice may require; and

17 F. Any further relief as this Court may deem necessary and proper.

21 DATED this 22<sup>nd</sup> day of August, 2023.

22  
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