

ADDRESSING GAPS IN THE CRISIS PSYCHIATRIC RESPONSE SYSTEM - OVERVIEW SUMMARY

CASE # 3AN-18-09814CI – *DOES V. STATE OF ALASKA*; *DISABILITY LAW CENTER V. STATE OF ALASKA*

OVERVIEW OF CASE

The Disability Law Center (DLC) and the Public Defender Agency sued DHSS and DOC about weeks-long waitlists to get into API, particularly because some were waiting in DOC facilities.

The Public Defenders (PDs) sought writs of habeas corpus in particular cases.

The DLC sought injunctive relief seeking a ruling that precludes DHSS or DOC from holding anyone in a correctional facility who is subject to a Title 47 evaluation order and for an order requiring timely evaluation of persons who are not in a designated evaluation facility.

These two cases were consolidated and a multi-day evidentiary hearing took place over the summer of 2019. The court issued a 61-page order on Oct. 21, 2019. In this order, the court:

1. Declined to grant habeas corpus relief because the only relief in such a case is release from custody and what the PDs were seeking was a more global resolution. However, the court noted that relief may still be litigated under a different theory and different case.
2. The court did grant the injunction requested by the DLC, holding that the state was not complying with its obligations under *Gabriel C.* that persons be transported to the nearest evaluation facility “without delay.” This injunction applies to persons held at referring hospitals as well as correctional facilities or jails.

In granting this relief, the court ordered DHSS to create an improvement plan stating that the plan could not be limited to increasing bed capacity at Alaska Psychiatric Institute (API) or other Designated Evaluation and Stabilization/Designated Evaluation and Treatment facilities (DES/DET). The court identified minimum criteria that needed to be addressed. With that in mind, the state issued its plan on Jan. 21, 2020. The parties are in settlement discussions, and the next hearing is set for March 18, 2020.

DHSS’ 90-DAY PLAN

1. HIRE STATEWIDE DES/DET COORDINATOR (PG 14 – 15)

- a. Located in the DHSS Commissioner’s Office.
- b. This position will ease the administrative burden on hospitals and the Department of Law. The coordinator will track court orders, available beds at API and DET facilities, keep a waitlist for admission, and facilitate transportation of respondents.
- c. By consolidating this work from the (currently performed at Department of Law), DHSS will have a better snapshot of the behavioral health emergencies occurring in the state at any given time, the number of *ex parte* respondents and the length of stay.
 - i. This will provide for real time capacity assessment, allowing for better and quicker evaluations and treatment for persons suffering from an acute psychiatric crisis.
 - ii. This will allow DHSS to more nimbly respond with needed systems changes and targeted programmatic interventions.

2. HIRE A STATEWIDE ADULT PROTECTIVE SERVICES WORKER THAT IS DEDICATED TO DISCHARGE PLANNING FROM HOSPITAL AND CORRECTIONAL FACILITIES (PG 24)

- a. Located in the DHSS Division of Senior and Disabilities Services.
- b. This position will ease the administrative burden on hospitals, including API and the Department of Corrections when dealing with individuals who lack capacity and need assistance through a guardianship or conservatorship to stabilize and hopefully avoid future hospitalizations. This worker will assist these facilities in finding family members, surrogate decision makers, structured decision makers, or petitioning the court for the appointment of a guardian or conservator.

3. CREATE PROCEDURES FOR OFF-SITE EVALUATIONS OF PERSONS WAITING FOR BEDS AT DES/DET (PG 16 – 17)

- a. Judge Morse ordered DHSS to “identify procedures and mechanisms whereby a person, subject to an evaluation order, who is waiting to be admitted to an evaluation facility can be evaluated, outside of an evaluation facility, to determine if that person no longer meets evaluation criteria or could be transported to an alternate facility.”
- b. DHSS will contract with or create a provider agreement for a pool of “mental health professionals” (MHP) as defined in AS 47.30.915(13) to re-evaluate any person being held on an *ex parte* order that is waiting for transportation to API or a DET.
- c. The MHP will be deployed to a non-DET referring facility, including the Department of Corrections, if 48 hours have passed since admission and a respondent has not been transferred to a DET.

4. ORDER THE API WAITLIST BY PRIORITY RATHER THAN CHRONOLOGY (PG 18)

- a. API would move to ordering admission based on the clinical factors, with DOC admissions being first in line.

5. PAY PARTICULAR FOCUS TO RESPONDENTS AT DOC FACILITIES (PG 19 – 20)

- a. DHSS will partner with DOC in creating a process of notification for Title 47 admissions before any court order is issued so the DES/DET coordinator can assist in finding appropriate evaluation placement outside of DOC and local jails.
- b. It is our intention to meet the court’s goals that persons who have not been charged with crimes but who are suffering from an acute psychiatric crisis, will not be diverted to corrections. When that is the only option, and in some cases it is, we will move to get them out of those facilities and to a DES/DET as soon as possible.
- c. The Governor introduced legislation regarding involuntary commitment procedures (HB 303/SB 238) and Psychiatric Examinations; Commitment; Insanity (HB 304/SB 239) to help address this as well.

OTHER EFFORTS BY DHSS THAT WILL IMPACT THE EFFICACY OF THE PLAN

1. MOVING FORWARD WITH PARTNERS (PG 21 – 22)

- a. For continuous quality improvement of the behavioral health system, DHSS will engage with hospitals and other partners on issues including Title 47, tele-psychiatric capacity, “best practices” materials, allowing ERs to electronically access API’s medication records, supporting a full continuum of care including crisis stabilization, and more.

2. WORK WITH THE ALASKA COURT SYSTEM TO AMEND COURT FORMS AS FOLLOWS:

- a. DHSS suggests the Court System modify their two different notification of rights forms into one form. The DES/DET coordinator will encourage all partners to use these forms.
- b. DHSS proposed the Court System amend its form order to allow DHSS, not the judge, to choose where an individual with an *ex parte* order can be evaluated. DHSS proposes language that we will arrange for immediate delivery of the respondent to the soonest available evaluation facility, considering the respondent’s clinical needs.

3. WORKING WITH PARTNERS FOR TIMELY IMPLEMENTATION OF THE CRISIS NOW MODEL (PG 23 – 24)

- a. Improved statewide call center.
- b. Mobile crisis teams.
- c. Crisis stabilization.

4. SUCCESSFULLY IMPLEMENTING THE 1115 WAIVER (PG 24)

- a. DHSS will leverage the Substance Use Disorder treatment and the Alaska Behavioral Health Program components of the 1115 Waiver to continue to build a full continuum of care.

5. LEGISLATIVE AND APPROPRIATION ITEMS (PG 24 – 25)

- a. Positions, contractors and services funded in partnership by the Mental Health Trust Authority, federal funds, and unrestricted general funds for FY 21 (see fiscal summary handout).
- b. Efforts that will have potential future year fiscal impacts or statutory changes including:
 - i. Full operation of API.
 - ii. Implementation of the Crisis Now Model.
 - iii. Annual evaluations of state statutes and regulations to update and improve the Title 47 system of care.