FILED
SUPREME COURT
STATE OF WASHINGTON
APRIL 15, 2020
BY SUSAN L. CARLSON
CLERK

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF STATEWIDE RESPONSE BY WASHINGTON STATE COURTS TO THE COVID-19 PUBLIC HEALTH EMERGENCY	))))))	ORDER RE: CIVIL COMMITMENT PROCEEDINGS No. 25700-B-616

WHEREAS, on February 29, 2020, Governor Inslee proclaimed a state of emergency due to the novel coronavirus disease (COVID-19) outbreak in Washington; and on March 13, 2020, President Trump declared a national emergency due to the COVID-19 outbreak across the United States; and

WHEREAS, during this state of emergency, the Centers for Disease Control and Prevention and the Washington State Department of Health have recommended increasingly stringent social distancing measures of at least six feet between people, and encouraged vulnerable individuals to avoid public spaces; and

WHEREAS, consistent with these recommendations, Governor Inslee issued and extended a "Stay Home, Stay Healthy" order directing non-essential businesses to close, banning public gatherings, and requiring Washingtonians to stay home except to pursue essential activities through at least May 4, 2020; and

WHEREAS, many court facilities in Washington are ill-equipped to effectively comply with social distancing and other public health requirements and therefore continued in-person court appearances jeopardize the health and safety of all participants in court proceedings; and

WHEREAS, pursuant to this Court's orders of March 4, 2020, March 18, 2020 (as amended March 20, 2020), and April 13, 2020, many Washington courts have taken important

steps to protect public health while ensuring continued access to justice and essential court services, including by strictly observing social distancing measures, holding proceedings remotely, suspending many in-building operations, and promulgating emergency rules as necessary; and

WHEREAS, the spread of COVID-19 across Washington requires a uniform, coordinated response from Washington courts to prevent further outbreak and to maintain effective and equitable access to justice; and

WHEREAS, this Court has considered proposals for an order regarding civil commitment proceedings, including an agreed proposal from the WACDL/WDA COVID-19 Taskforce, the WAPA ad hoc committee on COVID-19 and the Washington State Hospital Association, as well as responses from superior court judges and other justice partners; and

WHEREAS, the presiding judges across Washington need direction and authority to effectively administer their courts in response to this state of emergency, including authority to adopt, modify, and suspend court rules and orders as warranted to address the emergency conditions; and

WHEREAS, pursuant to this Court's April 13, 2020 order, the Court recognizes that there are procedural issues involved in civil commitment cases that are unique to the circumstances of those cases and warrant a supplemental statewide order.

NOW, THEREFORE, pursuant to the Supreme Court's authority to administer justice and to ensure the safety of all participants in court proceedings,

IT IS HEREBY ORDERED:

1. All parties to civil commitment proceedings are responsible for complying with the Involuntary Treatment Act (ITA), as set forth in chapter 71.05 RCW, and the Behavioral Health Services for Minors Act, as set forth in chapter 71.34 RCW, to ensure that all detained and civilly committed patients' civil rights are respected during this public health emergency.

2. Healthcare facilities shall provide for reasonable means and methods of communication between detained and civilly committed patients and their counsel, which may

include in person, video, or telephone. Attorneys shall provide healthcare facilities as much advance notice as possible about their desire to communicate with patients and their preferred method for doing so.

3. Designated Crisis Responders (DCRs) will follow the guidance issued by the Washington State Health Care Authority for video evaluations under the ITA. For emergency detentions under RCW 71.05.153, DCRs shall conduct interviews in person whenever safe and feasible. Where an in person interview is not safe or feasible, the DCR may conduct an interview by secure video if the technology is available. Before initiating a change in practice to video evaluations, DCRs, in conjunction with their Behavioral Health Administrative Service Organization, should first consult with their prosecutors to ensure that the prosecutor will move forward with petitions generated through video evaluations. If the prosecutor is not willing to support video evaluations, it may not be an option for that county/region. For non-emergency detentions under RCW 71.05.150, DCRs may conduct the interview in person whenever safe or feasible, or through secure video if the technology is available. In conducting an ITA evaluation by video, DCRs must ensure that a healthcare professional is present with the individual being evaluated if the DCR and facility together determine that presence is necessary.

4. Each person involuntarily detained, treated in a less restrictive alternative course of treatment, or committed for treatment and evaluation shall have reasonable access to a telephone, both to make and receive confidential calls with counsel, pursuant to RCW 71.05.217(5).

5. Court proceedings and patient meetings with defense counsel shall be conducted by remote means if reasonably feasible, and may be conducted by telephone if video is not available or appropriate in the circumstances of the particular case. Where court proceedings must occur in person, or where defense counsel must meet in person with a patient, social distancing and other public health measures must be strictly observed.

6. Courts shall work with all parties and any interpreters to provide a safe means for the introduction of evidence that all parties may view, which may include providing a copy of

the proposed evidence to the opposing party via electronic service. During all hearings conducted via video or teleconference, courts shall ensure that a means for the respondent to have private discussions with respondent's counsel is provided. During a hearing, limitations on technology shall not be a reason to prevent a respondent from providing testimony, if they choose. Hearings regarding a patient's release should be held on regularly scheduled dockets in compliance with chapter 71.05 RCW.

7. COVID-19 should not normally constitute conditions allowing waiver of applicable statutory timeframes for hearings, except for jury trials, as articulated in RCW 71.05 and RCW 71.34. However, courts may grant continuances to establish voluntariness, for preparation, and for good cause, including for COVID-19. Respondents' jury trial dates shall commence after May 4, 2020, unless extended by further order of the Court.

8. If an attorney visits a healthcare facility in person, the attorney is subject to that facility's safety and protective measures with respect to social distancing, the use of personal protective equipment and any other practice or protocol designed to prevent exposure to COVID-19.

9. Healthcare facilities shall provide requested records to counsel via remote capabilities for their use in ITA proceedings, recognizing that facilities are different in how patient records are maintained and in their ability to transmit remotely. Attorneys will identify only the records reasonably necessary to adequately prepare and present a case.

10. Trial court clerks shall review their procedures and consider implementing measures to facilitate the filing of pleadings without the need for person-to-person contact.

11. For proceedings conducted by video or telephone, the judge or commissioner will explain how the hearing will occur to ensure the respondent understands the process.

12. This order does not change the standard for dismissal under RCW 71.05.010(2), and as provided in *In re C.W.*, 147 Wn.2d 259, 281 (2002).

13. This order is intended to supplement this Court's revised and extended order of April 13, 2020, for purposes of all civil commitment matters. It takes effect immediately.

14. Nothing in this order prevents courts from developing and implementing jurisdiction specific procedures that meet the directives outlined herein.

15. The Washington Supreme Court may extend the time frames in this order as required by the continuing public health emergency, and if necessary, will do so by further order. This order and other applicable emergency orders may be deemed part of the record in affected cases for purposes of appeal without the need to file the orders in each case.

16. As used in this order, "parties" includes DCRs, petitioners, respondents, intervenors, and counsel.

17. The Court recognizes that ITA patients will be detained in a variety of situations depending on the facility where detained, the circumstances present in those facilities during the period of detention, and the circumstances present in the courts during the period of detention. Accordingly, this order is intended to provide flexibility to the parties and healthcare facilities while protecting the rights of detained and committed individuals.

DATED at Olympia, Washington this 15th day of April, 2020.

For the Court

Stephens, C.J.

CHIEF JUSTICE