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LEGAL CENTER SUES STATE FOR EXCESSIVE DELAYS IN PROVIDING COURT-ORDERED
COMPETENCY EVALUATIONS AND RESTORATIVE TREATMENT TO PRETRIAL DETAINEES

Excessive Delays Violate U.S. Constitution, Suit Says

"The competency evaluation system is plagued by chronic delays, trapping pretrial detainees who are presumed innocent in procedural limbo."

DENVER-- Presumptively innocent men and women with serious mental illnesses languish in Colorado jails for months awaiting court-ordered mental health evaluations and mental health treatment to so that they can participate in their criminal proceedings, according to a federal lawsuit filed today by the non-profit Legal Center for People with Disabilities and Older People. The lawsuit alleges that the excessive delays violate the United States Constitution. In some cases, pretrial detainees waited in jail for court-ordered mental health evaluations and treatment longer than they would have otherwise been confined for their alleged offense. The Colorado Department of Human Services and the Colorado Mental Health Institute at Pueblo (CMHIP) are named as defendants in the suit.

The human suffering and financial toll caused by the unjustifiable and chronic delays in evaluating possibly mentally ill criminal defendants and those found incompetent to stand trial are illustrated in signed affidavits from Arapahoe County Sheriff J. Grayson Robinson and the Colorado State Public Defender, Douglas K. Wilson that were attached to the lawsuit.

In his affidavit, Sheriff Robinson said it costs almost double to house a person with mental illness and that they place special demands on the staff to ensure their safety. The lawsuit states that jails cannot provide psychiatric medications to a detainee with mental illness involuntarily, which causes their psychological condition to deteriorate rapidly. Robinson's jail is not a mental health hospital, and does not have the medical professionals needed to evaluate, treat, and care for these individuals properly, a situation that "in a county jail also exposes those detainees to special risks," according to Robinson's affidavit. It goes on to state: "It is not uncommon for mentally ill detainees to commit crimes or violate facility conduct rules because of their inability to conform their behavior to the requirements of a secure detention facility."

Numerous specific cases of delays appear in Colorado State Public Defender Wilson's affidavit. In one recent case, Wilson says a Weld County man was arrested on January 16, 2011 deemed incompetent to stand trial on February 17, 2011, and ordered by a court to receive mental health treatment, to allow him to participate in his case, by the state hospital. However, he remained confined in the in the Weld County Jail, not able to proceed with his case, for six (6) months, until the state mental health hospital made a bed available for him. .

The Center's legal team is led by Iris Eytan, Jason Lynch, Caleb Durling, and Marcus Lock. Eytan and Lynch are partners, and Durling an associate at the Denver litigation firm of Reilly Pozner LLP. Lock, a former associate at Reilly Pozner, is now a partner at the Gunnison law firm of Bratton Hill Wilderson & Lock LLC.

Eytan and Lock prosecuted contempt actions against the state for the same problems in 2006, and ultimately negotiated a comprehensive settlement agreement, under which the State of Colorado was required to admit inmates for competency evaluations and treatment to restore to competency in under 30 days, thus substantially reducing the period of time mentally ill inmates were incarcerated without adequate mental health care and treatment. However, the "Zuniga" Agreement, as it was known, expired when the State opened a new 200-bed psychiatric facility in 2009, which the state claimed would fix the problem. It did not, and since the expiration of the Zuniga Agreement, Eytan and Lock have watched the time detainees with mental illness are languishing in jail for admission to CMHIP steadily increase.

"The state's actions and inactions are ongoing, pervasive, systemic violations of the 14th Amendment and cause undue suffering for some of the most disenfranchised people in Colorado," said Eytan.

"The people we are trying to help are caught in a procedural limbo; they need, and are constitutionally entitled, to treatment. But instead of receiving mental health care at CMHIP, they are unjustifiably confined in jail for months on end," Lock said.

"The jails' are not equipped to hold pretrial detainees who suffer from mental illness. They cannot provide the treatment those detainees need, and the excessive delays in evaluating mentally ill detainees and admitting them into the state hospital can cause persons with mental illness to deteriorate, further lengthening the time it takes to restore them to competency," Lynch said.

The suit requests declaratory and injunctive relief to permanently end the unconstitutional delays that people with mental illness in Colorado suffer in receiving competency evaluation and restorative treatment. Specifically, the Center is asking the federal court to require the State of Colorado to provide evaluation or treatment to mentally-ill detainees within seven days of a court order.

The Legal Center for People with Disabilities and Older People is an independent public interest non-profit specializing in civil rights and discrimination issues. The Legal Center protects the human, civil, and legal rights of people with mental and physical disabilities, people with HIV, and older people throughout Colorado, and works for systematic change to improve these people's lives. The goal of the Legal Center's work is to open up the legal system to those who would otherwise be unable to voice their needs because of the complexity of the issues they face, their disability, or because they are unable to act on their own behalf.

Reilly Pozner is a full-service litigation firm handling high profile cases across the country. The firm's lawyers have handled matters in more than 40 states. Reilly Pozner uses its unparalleled trial experience to excel in cases involving significant liability exposure and a high likelihood of going to trial. Reilly Pozner has been referred to as the "leading firm of trial lawyers in the state." Throughout its history, Reilly Pozner has dedicated substantial resources to pro bono legal work, which has included both complex cases involving broad-based social issues, and also the representation of individuals who could not otherwise afford legal representation.

Bratton Hill Wilderson & Lock is a one of the premier law firms in Western Colorado. Located in Gunnison, Colorado, BHWL handles transactional, litigation, and water matters across the State. The remarkable diversity in the professional backgrounds of the firm's attorneys creates a unique synergy that allows BHWL to provide sophisticated legal services in a broad range of areas. Like Reilly Pozner, BHWL believes it has a responsibility to provide pro bono legal services to those in need.