



Disability Rights

WASHINGTON

Washington's protection and advocacy system

AB v. DSHS (TRUEBLOOD) FREQUENTLY ASKED QUESTIONS (FAQs)

1. What is the legal case *AB v. DSHS*, more commonly referred to as “*Trueblood*”?

AB v. Washington Department of Social and Health Services (DSHS) is a federal class-action lawsuit that requires DSHS to provide certain mental health services to people held in jail facing criminal charges. These services include: 1) provide an in-jail evaluation of someone's competency to stand trial within 14 days of a court order; and 2) move all people out of jail and into a treatment facility within 7 days of a court order for competency restoration services or inpatient evaluation.

2. Who is a *Trueblood* class member?

Being a class member means that a person belongs to a specific group that is directly affected by allegations against a defendant in a class action lawsuit. In the *Trueblood* lawsuit, any person waiting in jail for DSHS to give them court-ordered competency restoration services is a class member. A person does not need to do anything to “opt in” to the class of people affected by the *Trueblood* lawsuit. They simply are a class member if they are waiting in jail for court-ordered competency restoration services.

People who are no longer in jail but are still waiting for competency restoration services are not *Trueblood* class members anymore. A person is a *former* class member if they waited in jail for these services in the past but are not currently in jail waiting for the services. Former class members still may be eligible for *Trueblood*-funded diversion services, which are discussed below.

3. Do *Trueblood* class members have an attorney?

Disability Rights Washington (DRW) is the attorney for the class of people affected by the *Trueblood* lawsuit. DRW works to enforce class members' right to get competency restoration services within the 7-day and 14-day timelines.

Class members also usually have a criminal defense attorney representing them in the individual criminal case that led to their involvement in the competency restoration system. DRW cannot help class members with their individual criminal case and cannot make the criminal court do anything specific for the class member, even related to competency restoration services—this is the generally the responsibility of the class member's criminal defense attorney.

4. What happens if the criminal court decides that a person cannot be restored to competency to stand trial?

Under Washington State law, if the criminal court decides a class member is unlikely to regain competency to stand trial, the court may dismiss the case “without prejudice.” “Without prejudice” means that these charges could potentially be brought again in the future. After dismissal, the criminal court can then refer the person for an evaluation for possible civil commitment. This process is commonly referred to as “civil flip” or “civil conversion.” After this evaluation, the state might decide to file a court petition seeking involuntary civil commitment for up to 180 days. A person facing possible involuntary civil commitment is entitled to an attorney and a court hearing.

5. What is a “*Hand*” dismissal?

A class member and their criminal defense attorney may file a motion to dismiss the criminal case without prejudice when the class member is stuck in jail waiting for competency restoration services for a long time. It is ultimately up to the criminal court judge whether to grant this motion. This type of motion to dismiss based on competency restoration wait times is commonly referred to as a “*Hand*” dismissal because of a previous Washington State criminal case, *State v. Hand*. DRW cannot assist class members with filing “*Hand*” dismissals or any other motions in their criminal cases; only the criminal defense attorney can assist with this.

6. Is there any money available to class members under the *AB v. DSHS (Trueblood)* lawsuit?

There is no individual financial relief for class members under the *Trueblood* federal class action lawsuit. However, there may be financial relief in an individual criminal case or in an individual civil suit against the state (see below). Under the *Trueblood* class action lawsuit, when DSHS fails to meet the 7-day or 14-day timelines for competency restoration services, the federal court charges the state fines. These fines are calculated based on how many class members are waiting for competency restoration services and for how long. The state pays these fines directly to the federal court overseeing the *Trueblood* case.

In 2016, the federal court ordered that these fines be used to pay for diversion programs around the state that provide treatment, housing, and other services to current and former *Trueblood* class members. A class member does not get paid any of

the *Trueblood* fine money from the federal court, but they may qualify for diversion services that are funded by these fines.

7. Is there any money available to *Trueblood* class members under their individual criminal cases?

When a class member waits in jail beyond the 7-day or 14-day deadlines for competency restoration services in their individual criminal case, they can ask the criminal court judge to find the state in contempt and order the state to pay contempt fines. A class member will usually need help from their criminal defense attorney to do this.

It is up to the criminal court judge to decide whether to order the state to pay contempt fines, how much the fines will be, and to whom the fines will be paid. Sometimes the judge orders the state to pay contempt fines directly to the individual waiting in jail, but not always. For example, sometimes the judge orders the state to pay contempt fines to the jail or the county to cover the costs of keeping the individual in jail. ***Questions about contempt fines in an individual criminal case should be directed to the criminal defense attorney. DRW cannot answer specific questions about the contempt fines in a criminal case.***

If a class member is unsure about contempt fines in an individual criminal case, it may be helpful to ask their criminal defense attorney the following questions: “When I was waiting in jail, did we file a motion against the state seeking a contempt order and monetary fines? If we filed the motion, did the judge grant it? If the judge granted it, were those fines ever reduced to judgment? Who are the fines supposed to be paid to?”

8. Is it possible to file a motion for contempt and fines in an individual criminal case after the class member has left jail and is no longer waiting for competency restoration services?

If a class member is no longer waiting for competency restoration services in jail (for example, if they have already been transferred out of jail and into a treatment facility), then they likely cannot file a motion for contempt and fines based on the time they waited in jail. The contempt order and fines are meant to motivate the state to transfer the class member out of jail and into the hospital for competency restoration, so once this has happened the motion no longer serves its purpose. A criminal defense attorney can answer more specific questions about this.

9. What happens after a judge finds the state in contempt and orders fines based on competency restoration waits in an individual criminal case?

Generally, if the criminal court judge orders the state to pay contempt fines in an individual criminal case, that court order must be “reduced to judgement” before the state will actually pay the fines. The court order is not automatically reduced to judgement. Usually, the state’s attorney and the criminal defense attorney must work together to do this. Once the order is reduced to judgement, the state should pay it. A criminal defense attorney can answer more specific questions about this.

10. What can happen as a result of receiving contempt fines from the state?

Sometimes, receiving large lump sum payments can make people ineligible for certain benefits and services, like food stamps, Medicaid, or SSI. There are ways of handling or spending lump sum payments that help avoid these problems. A class member who is receiving a large lump sum may want to talk to an attorney about this. If the class member is in jail, they may want to contact their criminal defense attorney or alternatively call DRW at (206) 324-1521. If the class member is at Western State Hospital (WSH) or Eastern State Hospital (ESH), they may want to reach out to Northwest Justice Project’s (NJP) patient legal services office: WSH is (253) 756-2965 or (888) 201-1015; ESH is (509) 381-2352. If the class member is not in jail and not at WSH/ESH, they may want to contact NJP’s CLEAR Intake Hotline at (888) 201-1014 weekdays between 9:15 am - 12:15 pm.

11. Can a class member sue the state for the time they waited in jail beyond the 7- or 14-day timelines?

A person who waited for a long time in jail for competency restoration services can file a civil lawsuit against the state seeking monetary damages for the harm they suffered while waiting in jail. While a person can file such a lawsuit without an attorney, it might be helpful to consult with an attorney and find legal representation in this kind of case. ***DRW does not represent people in these types of cases.*** To find attorneys willing to take on a case like this, a person can ask their criminal defense attorney if they have any referrals, or they may contact the local county bar association. County bar associations often have attorney referral services.

12. What kind of contempt fine-funded diversion programs and services are available to *Trueblood* class members?

As explained above in Question #6, the contempt fines paid by DSHS to the federal court in the *Trueblood* case are used to fund diversion programs and services for *Trueblood* class members. Currently, there are fine-funded programs in several different counties around the state focused on providing transitional and permanent supportive housing to current and former *Trueblood* class members. For more information about fine-funded diversion programs, please contact Disability Rights Washington via the instructions provided in Question #16.

13. What kind of state-funded diversion programs and services are available to *Trueblood* class members?

In addition to the diversion programs funded with *Trueblood* contempt fines, Washington State also funds its own set of programs geared towards helping *Trueblood* class members. The most prominent state-funded *Trueblood* programs include: the Forensic Navigator Program (FNP); Outpatient Competency Restoration Program (OCRP); Forensic Projects for Assistance in Transitions from Homelessness (FPATH); and Forensic Housing and Recovery through Peer Services (FHARPS). These programs are described below.

Forensic Navigators

Forensic Navigators are employees of DSHS who work with individuals receiving competency restoration services. Forensic Navigators are typically assigned to defendants in criminal cases after a court orders the defendant to have a competency evaluation. Forensic Navigators screen individuals for other diversion programs and services and act as the initial referral to many of the other *Trueblood* programs. Although there are several routes to access *Trueblood* programs, the Forensic Navigators may be a helpful resource to help individuals engage with *Trueblood* programs and services. One of the main roles of the Forensic Navigators is to figure out whether an individual is appropriate for the Outpatient Competency Restoration Program (OCRP). Forensic Navigators provide this information to the criminal court and may continue to provide updates to the criminal court about how an individual is doing in OCRP or other diversion programs.

Diversion Navigators

Diversion Navigators work to divert those at risk of engaging with the competency system. Diversion Navigators are also DSHS employees, but they work to divert

individuals from the forensic competency system *before* a judge orders a competency evaluation in a criminal case. Diversion Navigators identify eligible criminal defendants and advocate for diversion or dismissal instead of competency restoration and criminal prosecution. Individuals typically qualify for Diversion Navigator services only if they have a history of multiple dismissals of criminal charges due to competency issues.

Outpatient Competency Restoration Program (OCRP)

OCRP allows individuals to receive competency restoration in an out-of-custody setting, rather than an inpatient treatment facility. OCRP can provide housing supports to participants, which may include hotel vouchers, rental assistance, or transitional housing. Although Forensic Navigators provide a report to the court about whether they think an individual is suitable for OCRP, it is the criminal court judge who will ultimately decide whether to order the individual into OCRP.

Forensic Project for Assistance in Transitions from Homelessness (FPATH)

FPATH is an intensive case management program designed to serve *Trueblood* class members who have experienced chronic homelessness and multiple prior orders for competency restoration services. FPATH services include outreach and case management; housing subsidies and referrals; transportation assistance; support for accessing health services; ID attainment and benefits applications; funding for communication devices and independent living skills training. FPATH services typically last for six months but may last longer.

Forensic Housing and Recovery Through Peer Services (FHARPs)

FHARPS is primarily a housing support program, with the goal of helping individuals move into permanent supportive housing. FHARPS services include peer support and counselling; subsidies for housing application fees, security deposits, or rent for 6-24 months; and referrals to community support. FHARPS services typically last for six months but may last as long as 24 months.

Please note: Eligibility requirements for all *Trueblood* diversion programs vary. DRW cannot guarantee a class member will be served by any *Trueblood* diversion program.

14. Are *Trueblood* diversion programs available statewide or only in certain parts of the state?

The specific programs and services available to an individual will depend on which part of the state a class member is in. Contempt fine-funded programs operate in Clark, King,

Mason, Spokane, and Thurston counties. State-funded programs (Forensic Navigators, Diversion Navigators, OCRP, FPATH, and FHARPS) operate in the following counties: Adams, Clallam, Clark, Ferry, Jefferson, King, Kitsap, Klickitat, Lincoln, Mason, Pend Oreille, Pierce, Skamania, Spokane, Stevens, and Thurston.

15. Who runs the state-funded *Trueblood* programs?

DSHS directly operates the Forensic Navigators and Diversion Navigators Programs. The Health Care Authority (HCA) contracts with local non-profits and service providers in different counties to operate OCRP, FHARPS, and FPATH. Class members who have questions about eligibility for any of these specific programs may first want to speak to their criminal defense attorney, civil commitment attorney, or assigned Forensic Navigator. Alternatively, a class member may reach out directly to the service providers identified in the table below:

County	Organization	Programs	Contact Information
King County	Community House Mental Health Agency	OCRP, FPATH, FHARPS	206-329-6485
	Telecare	FPATH, FHARPS	510-337-7950
Pierce County	Greater Lakes Mental Health Agency	OCRP, FPATH	253-581-7020
	Comprehensive Life Resources	FHARPS	253-396-5800
Spokane, Ferry, Stevens, Pend Oreille, Lincoln, Adams Counties	Frontier Behavioral Health Services	OCRP, FPATH, FHARPS	509-838-4651
Kitsap County	Kitsap Mental Health Services	OCRP, FPATH, FHARPS	360-405-4010
Jefferson and Clallam Counties	Peninsula Behavioral Health	FPATH, FHARPS	360-457-0431
Thurston and Mason Counties	Olympic Health and Recovery Services	OCRP, FPATH, FHARPS	360-763-5828

Clark, Klickitat, and Skamania Counties	Columbia River Mental Health Services	FHARPS	360-993-3000
	SeaMar Community Services	FPATH	360-558-5795
	Lifeline Connections	OCRCP	800-604-0025

16. Additional questions?

If there are still questions about *AB v. DSHS (Trueblood)* after reading this FAQ, a person may call Disability Rights Washington at (206) 324-1521 or toll free at (800) 562-2707 to set up a Technical Assistance appointment. Our phone lines are open Monday through Friday, from 9 am-12 pm and 1-4 pm. A person may also write to us at:

Disability Rights Washington
 315 Fifth Avenue South, Suite 850
 Seattle, WA 98104

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Always advocate in a timely manner. Please be aware that there are certain time limits or deadlines to file a complaint, a lawsuit, or take legal action.

To receive this information in an alternative format, such as large print or Braille, please call DRW toll-free at (800) 562-2702.

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