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NO. 54624-8-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

In re the Detention of:

C.M.,

Appellant.

BRIEF OF RESPONDENT

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I. INTRODUCTION

C.M. is diagnosed with schizoaffective disorder, bipolar type, and is extraordinarily aggressive and cognitively disorganized due to symptoms of psychosis. His psychiatrist described him as one of the most acute, complex, and treatment-resistant patients that he ever treated. C.M. was already detained for long-term intensive inpatient treatment at Western State Hospital when his doctors filed a petition for further involuntary treatment in late 2019. Following a bench trial in February 2020, the trial court found that he was gravely disabled under both prongs (a) and (b) of the statute, that he presented a likelihood of serious harm to others, and that he had been committed pursuant to felony charges dismissed due to incompetence to stand trial and presented a substantial likelihood of committing similar acts because of a mental disorder.

C.M. appeals only the trial court's legal conclusion that he is gravely disabled, arguing that the facts the trial court listed as support for its legal findings do not satisfy the legal definition of grave disability. But if this Court rules that the State proved either of the statutory definitions of grave disability, C.M.'s argument fails; the State need not prove both. The trial court's order was supported by substantial evidence that C.M.'s mental disorder was so severe that he was both (1) in danger of serious physical harm resulting from a failure to provide for his essential needs of health or

safety under prong (a) of the statute, and (2) manifests severe deterioration in routine functioning evidenced by recent, significant loss of cognitive or volitional control and would not receive essential care for his health or safety if he were released. C.M.'s argument ignores the totality of the trial court's written order and is wrong about the law of grave disability. Accordingly, this Court should deny his appeal.

But even if this Court grants C.M.'s appeal, he is incorrect that the proper remedy is a new trial. The best remedy in that instance is for this Court to remand to the trial court to strike the grave disability findings, as C.M. will remain committed on the other, unchallenged, grounds.

II. COUNTERSTATEMENT OF THE ISSUES

1. Do the trial court's findings of fact that C.M. was at risk of both serious physical harm and "the 'revolving door' of mental health treatment" due to his ongoing impulsivity, aggression, poor judgment, and lack of insight into his mental illness support its conclusion that C.M. is gravely disabled?
2. If this Court finds the trial court's findings of fact do not support C.M.'s commitment on the basis of grave disability, is the proper remedy a new trial when C.M. does not challenge the other bases for his civil commitment?

III. COUNTERSTATEMENT OF THE FACTS

C.M. was arrested in Grays Harbor County in 2017 for possession of a stolen vehicle. CP 19. He was found incompetent to stand trial and referred for civil commitment. CP 17-18. He has since remained at Western

State Hospital for involuntary treatment. CP 80-81. He was eventually moved to a higher-security ward due to his unpredictable, aggressive behavior. *Id.* Edward Coyle, Ph.D., and Daniel Ruiz-Paredes, M.D., filed a petition to commit C.M. for up to 180 days of additional involuntary treatment in November 2019. CP 46. An amended petition was filed in February 2020 shortly before trial, alleging numerous bases for civil commitment: (1) that C.M. was gravely disabled; (2) that he had threatened, attempted, or inflicted physical harm upon another during the current treatment period in which he was detained, and as a result of a mental disorder presented a likelihood of serious harm; and (3) that he continued to be in custody pursuant to the dismissed felony charge of possession of a stolen vehicle, and as a result of a mental disorder presented a substantial likelihood of committing acts similar to the charged criminal behavior. CP 77-78. C.M. requested a jury trial. CP 56.

After numerous continuances, trial began on February 19, 2020. Verbatim Report of Proceedings (VRP) 4.¹ The parties questioned a venire of prospective jurors and selected a panel on February 24, 2020, but before the jury was sworn, C.M. elected to proceed by bench trial with the

¹ Although the VRP is divided into three volumes, its pages are consecutively numbered. VRP 1-64 transcribes the proceedings from Feb. 19, 2020; VRP 64-207 transcribes the proceedings from Feb 24, 2020; and VRP 208-294 transcribes the proceedings from Feb 25, 2020. Therefore, the State will refer to the VRP only by page numbers because there is little risk of confusion between the volumes.

Superior Court Judge as fact-finder. VRP 167-171. The State called Drs. Coyle and Ruiz as witnesses. VRP 177, 231.

Most relevantly to the issues raised in this appeal, both doctors testified about whether C.M. could meet his own health and safety needs in the community and whether he could manage his own mental health so as to avoid re-hospitalization if released. *E.g.*, VRP 194, 244-45. Dr. Coyle testified that C.M. has significantly impaired judgment and insight into his mental illness. VRP 190-91. C.M.'s lack of insight "prevents him . . . from making realistic plans to take care of himself from minute to minute, hour to hour, and day to day." VRP 190.

Dr. Coyle had no confidence that C.M. would be able to meet his basic health and safety needs independently if he were released without any structured care. VRP 195. This was in part because, even in a "very secure and closely monitored environment," C.M. still regularly engaged in dangerous behaviors. VRP 195. Dr. Coyle also had concerns about C.M.'s ability get necessities like housing, food, and clothing, noting that C.M. "doesn't appear to have much understanding of cause and effect in the real world" and "would unlikely be able to organize his day, even on a basic level." VRP 195-96.

Dr. Ruiz likewise believed that C.M. would be unable to meet his basic needs if released. VRP 244-45. Although his condition had improved,

he had been suicidal during the course of his hospitalization, would “urinate and defecate on the floor,” would “drink his own urine,” and would jump headfirst from his bed to the ground in an attempt to harm himself. VRP 239-240. He could harm his fists by punching things or other people, or by possibly eliciting violence from others. VRP 245. C.M. required one-to-one staff monitoring through much of his hospitalization. VRP 248, 255. Dr. Ruiz also believed C.M. lacked “the ability to make any plans for the next day or the following week” about where to get his basic needs met. VRP 244-45. Dr. Ruiz believed these behaviors could lead to serious physical harm. VRP 245-46.

Dr. Coyle also noted that C.M.’s cognitive and volitional control was impaired. VRP 196-97. Specifically, he noted that C.M. could not “organize himself adequately” or “follow basic social guidelines.” VRP 196. Based on this, Dr. Coyle opined that it was “unlikely that [C.M.] would take any steps to follow through on mental health care on his own.” VRP 197. Dr. Coyle also believed that based on the information he had that C.M. would not take medications, would not seek counseling, and “would not listen to advice by anybody on his own.” VRP 197. Critically, Dr. Coyle felt that if C.M. were released, his “health and safety would be imperiled,” as would others around him, and he would be at “very high” risk of

re-hospitalization due to his lack of impulse control and the high likelihood that he would draw the attention of law enforcement. VRP 197.

Dr. Ruiz echoed Dr. Coyle's concerns about C.M.'s risk of re-hospitalization if released. Specifically, Dr. Ruiz testified that medications were critical to C.M.'s psychiatric stability and that left to his own devices, C.M. would be unlikely to take those medications voluntarily. *E.g.*, VRP 243, 246. Dr. Ruiz also believed that C.M. lacked a rational understanding of both his need for medications and his need for psychiatric treatment. VRP 243. These factors led Dr. Ruiz to believe that C.M. would not voluntarily seek the mental health care he would need if he were released, which in turn would lead to C.M. "deteriorat[ing] to the point that he could end up harming himself seriously, harming other people, [or] end[ing] up . . . back in the system" by harming others or engaging with police. VRP 246-47. Dr. Ruiz did not believe C.M. was even capable of being treated under court order in a community setting; the acuity of his illness and resistance to treatment was so high. VRP 255-56. Even if C.M. were in a group home under court order, Dr. Ruiz felt that he would quickly be back in the legal system and again through the "revolving door" of involuntary treatment due to his psychiatric instability. VRP 255-56.

At the close of trial, the court below found that the State had proved that C.M. was gravely disabled under prongs (a) and (b) of the statute; that

he posed a likelihood of serious harm to others; that he was in custody for acts constituting a felony, that the charges had been dismissed due to incompetence to stand trial, and he presented a substantial likelihood of committing similar acts due to a mental disorder; and that there was no less restrictive alternative to hospitalization in his best interests or the best interests of others. VRP 288-92. The trial court specifically found the doctors' testimony credible and noted C.M.'s ongoing impulsiveness and lack of judgment in support of its finding that he was gravely disabled. VRP 288-89. First, under prong (a) of grave disability, the court found that C.M. would be in danger of serious physical harm – a danger which need not be imminent – due to his continued psychiatric instability. VRP 288-89. The court noted C.M.'s improvement in functioning, but still found that C.M. would not be able to maintain his health and safety in the community due to his “impulsive poor judgment” under the “revolving door” prong of grave disability. VRP 290.

The court entered findings of fact and conclusions of law that included both preprinted bases for commitment that track the corresponding statutory language and additional “facts in support” of those preprinted statutory findings. CP 123-27. The preprinted language under “Reasons for Commitment” reads:

Is/Continues To Be Gravely Disabled and Respondent:

as a result of a mental disorder is in danger of serious physical harm resulting from the failure to provide for his/her essential needs of health or safety.

as a result of a mental disorder manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over actions, is not receiving such care as is essential for health and safety.

CP 124-25.

The trial court's additional findings related to grave disability in the "Facts in Support" section read:

Prong (a): Respondent still at risk of serious physical harm due to impulsive behavior and poor judgment, disorganized thoughts; reference Pet'rs. Exhibit 7, showing ongoing delusions and assaultive behavior. Exhibit 7 contains two chart notes; the first shows that [C.M.] struck a Western State Hospital staff member in the chin. The second chart note shows that he attempted to strike and spit at staff members even after "contracting" to maintain safe behavior. In the community he could provoke others resulting in harm to himself.

Prong (b): Court incorporates findings from prong (a) of grave disability. Improvement in daily life skills; impulsivity and lack of insight/judgment could lead to "revolving door" of mental health treatment.

CP 125.

C.M. timely appeals. He challenges only the trial court's finding that he was gravely disabled on the grounds that the court's "facts in support"

section does not match the statutory criteria required to find a person gravely disabled. Opening Brief of Appellant (Op. Br.) at 7-9.

IV. ARGUMENT

The trial court's written findings of fact, which referenced C.M.'s ongoing impulsivity, aggression, poor judgment, and lack of insight into his mental illness, established a sufficient factual basis for its conclusion of law that he was gravely disabled. This Court may affirm the trial court's finding on grave disability if the State proved that C.M. met *either* statutory definition of grave disability (commonly referred to as "prong (a)" and "prong (b)" of grave disability); the State need not prove both. *See In Re Det. of LaBelle*, 107 Wn.2d 196, 201-02, 728 P.2d 138 (1986). Because there was substantial evidence for the trial court's findings of fact and ultimate legal conclusion that C.M. was gravely disabled as a result of a mental disorder under either statutory definition, this Court should decline to reverse the trial court's conclusion of law that C.M. was gravely disabled as a result of a mental disorder.

Even if this Court finds that the trial court's findings of fact are insufficient to support its conclusions of law on grave disability, C.M. will continue to be detained under the other, unchallenged bases for civil commitment. The proper remedy in that event, therefore, is to remand to the trial court to strike the grave disability finding as a basis for civil

commitment, as this Court has previously ruled that historical findings of grave disability can have future negative collateral consequences even if other bases of commitment are unchallenged on appeal. *In re Det. of B.L.R.*, No. 53204-2-II, 2020 WL 3254142, at *4 (Wash. June 16, 2020) (unpublished) (finding that because grave disability finding can have possible future consequences, appeal was not moot even though appellant did not challenge other basis of commitment).²

A. Substantial Evidence Supported the Finding that C.M. was Gravely Disabled as a Result of a Mental Disorder

1. Standard of review

C.M.'s argument on appeal, that the trial court's findings of fact do not support its legal conclusion that he is gravely disabled, is best restated as a challenge to the sufficiency of the evidence. A trial court's findings of fact on grave disability will generally not be overturned at the appellate level if they are supported by substantial evidence that the trial court could reasonably have found to be clear, cogent, and convincing, i.e., that the issue in question was shown to be "highly probable." *In Re Det. of LaBelle*, 107 Wn.2d at 209. Put another way, a sufficiency of the evidence challenge to a finding of grave disability will not succeed if the finding is supported by substantial evidence "in light of the 'highly probable' test." *Id.*

² The State cites this case for its persuasive value only. It is not binding authority. For the reasons outlined in *B.L.R.*, the State does not argue that this appeal is moot.

Substantial evidence is “evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise.” *Matter of Det. of A.S.*, 91 Wn. App. 146, 162, 955 P.2d 836 (1998). When sufficiency of the evidence is challenged, the appellate court must ask whether there was any “evidence or reasonable inferences therefrom to sustain the verdict when the evidence is considered in the light most favorable to the prevailing party.” *Goodman v. Boeing Co.*, 75 Wn. App. 60, 82, 877 P.2d 703 (1994). The appellate court must defer to the trier of fact on the persuasiveness of the evidence, witness credibility, and conflicting testimony. *In re the Matter of Knight*, 178 Wn. App. 929, 937, 317 P.3d 1068 (2014).

A reviewing court “will not substitute its judgment for that of the trial court even though it might have resolved a factual dispute differently” if it finds that substantial evidence supports the trial court’s findings of fact. *Sunnyside Valley Irr. Dist. v. Dickie*, 149 Wn.2d 873, 879-80, 73 P.3d 369 (2003). If the reviewing court finds that substantial evidence supports the findings of fact, it then evaluates the trial court’s conclusions of law de novo, determining whether they are supported by the findings of fact. *State v. Homan*, 181 Wn.2d 102, 106, 330 P.3d 182 (2014).

2. The trial court properly concluded that C.M was gravely disabled under prong (a) because he was in danger of serious physical harm due to his ongoing impulsivity, poor judgment, and disorganized thoughts

There was substantial evidence adduced through testimony below for the trial court to find that C.M. was gravely disabled as a result of his mental disorder under prong (a). A person may be detained for involuntary treatment for up to 180 days on this basis if he or she “[i]s in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety[.]” RCW 71.05.020(22)(a); *see also* RCW 71.05.280(4), 71.05.320(4)(d).

Prong (a) of grave disability does not require that the danger of serious harm be “imminent.” *In Re Det. of LaBelle*, 107 Wn.2d at 203. But the State “must present recent, tangible evidence of failure or inability to provide for such essential human needs as food, clothing, shelter, and medical treatment which presents a high probability of serious physical harm within the near future unless adequate treatment is afforded.” *Id.* at 204–05. The *LaBelle* court recognized that a requirement of imminence might mandate the “premature release of mentally ill patients who are still unable to provide for their essential health and safety needs outside the confines of a hospital setting but who, because of their treatment

there, are no longer in ‘imminent’ danger of serious physical harm.”
Id. at 203.

The State proffered sufficient evidence for the trial court to find that C.M. was gravely disabled under prong (a). Dr. Coyle noted that C.M. engaged in dangerous behaviors even in the highly secure environment of the hospital and felt that C.M. could not organize himself well enough to obtain basic necessities. VRP 195-96. Dr. Ruiz noted behaviors such as C.M. urinating and defecating on the floor, drinking his own urine, and jumping headfirst off his bed. VRP 239-40. Dr. Ruiz also believed that C.M. lacked “the ability to make any plans for the next day or the following week” about where to get his basic needs met. VRP 244-45. Both doctors believed these behaviors would prevent C.M. from meeting his basic needs on his own. VRP 195-96, 245-46.

Both doctors linked these behaviors to C.M.’s mental disorder. Specifically, Dr. Coyle pointed to C.M.’s mental disorganization, impulsivity, impaired judgment, and lack of insight into his mental condition as clear indicators that C.M. could not meet his basic needs independently. VRP 190, 191, 195-96. Dr. Ruiz echoed these concerns, describing C.M.’s continuing psychotic symptoms and inability to plan for his basic needs from day to day. VRP 244-46.

C.M.'s argument first ignores that the trial court used preprinted findings of fact that match the statutory criteria for each definition of grave disability. CP 125.³ To support those findings, the trial court added findings of fact under prong (a) that C.M. was “still at risk of serious physical harm due to impulsive behavior[,] . . . poor judgment, [and] disorganized thoughts,” and described examples of recent impulsive, delusional, and aggressive behaviors, referencing admitted exhibits.⁴ CP 125. These findings were supported by the testimony of Drs. Coyle and Ruiz, who referenced C.M.'s continued lack of insight and judgment, his impulsivity, and his cognitive disorganization in offering their opinions on C.M.'s concomitant inability to meet his basic health and safety needs independently. VRP 195-96, 245-46.

³ The court makes the following findings of fact by clear cogent and convincing evidence:

...
Is/Continues to To Be Gravely Disabled and Respondent:

[A]s a result of a mental disorder is in danger of serious physical harm resulting from the failure to provide for his/her essential needs of health or safety[; and]

[A]s a result of a mental disorder manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over actions, is not receiving such care as is essential for health and safety.

CP 124-25.

⁴ The trial exhibits do not appear in the appellate record for unknown reasons.

These additional findings, taken in conjunction with the preprinted findings of fact, establish a sufficient factual basis for prong (a) of grave disability. The facts presented at trial that the court relied upon to make this finding support a reasonable inference that C.M. would be unable to “provide for such essential human needs as food, clothing, shelter, and medical treatment” placing him at a high probability of risk of “serious physical harm within the near future unless adequate treatment is afforded.” *In Re Det. of LaBelle*, 107 Wn.2d at 205. The trial court’s findings of fact supported C.M.’s commitment under prong (a) of grave disability.

3. The trial court properly concluded that C.M was gravely disabled under prong (b) because he could not make rational decisions regarding his psychiatric care leading to a high probability that he would be re-hospitalized if released

Committing seriously mentally ill persons under prong (b) of grave disability allows the State to intervene with persons who have been stuck in the “revolving door” of the mental health system. *In Re Det. of LaBelle*, 107 Wn.2d at 206. This basis of commitment was designed to help ensure continuity of care for mentally ill persons who have a history of leaving involuntary treatment, stopping psychiatric medications and care, decompensating, and returning to involuntary hospitalization. *Id.* at 206-07. Under this standard, the evidence must show that the person is unable to make a rational choice about his or her need for treatment, creating a

“causal nexus” between the person’s severe deterioration in routine functioning and evidence that they would not receive essential care if they were released. *Id.* at 208.

A person cannot be committed under prong (b) of grave disability just because they would benefit from mental health treatment or because treatment would be in their best interests; treatment must be essential to maintain the person’s health or safety. *Id.* But this does not mean that the trial court may not draw reasonable inferences from a person’s history that their mental condition would deteriorate without proper care. On the contrary, when determining whether a person meets the criteria for civil commitment under this standard, the trial court must give “great weight” to “evidence of a prior history or pattern of decompensation and discontinuation of treatment resulting in . . . repeated peace officer interventions resulting in . . . criminal charges . . . or jail admissions” and may use that evidence as a factual basis for concluding the person “would not receive, if released, such care as is essential for his or her health or safety.” RCW 71.05.285.

Relatedly, when deciding whether a person meets criteria for prong (b) of grave disability, the court may consider the likelihood that the person would discontinue necessary medications when not under court order, leading to re-hospitalization. *In re Det. of C.K.*, 108 Wn. App. 65,

76-77, 29 P.3d 69 (2001). Additionally, the *LaBelle* Court roundly rejected a strict, literal reading of “repeated and escalating” under the statutory definition for prong (b) of grave disability, as it would require courts “to release a person whose condition . . . has stabilized or improved minimally[.]” *In Re Det. of LaBelle*, 107 Wn.2d at 207. The *LaBelle* court recognized that this could have “absurd and potentially harmful consequences” for persons who still manifested “severe deterioration in routine functioning and, if released, would not receive such care as is essential for his or her health or safety[.]” which could not have been intended by the legislature. *Id.*

The trial court here, as it did for its findings under prong (a), used a combination of preprinted findings and individualized written findings. CP 125; *supra* note 1.⁵ In addition to incorporating the statutory criteria for prong (b) of grave disability, the trial court incorporated its findings for prong (a) and added that C.M.’s “impulsivity and lack of insight/judgment could lead to ‘revolving door’ of mental health treatment.” CP 125. The trial court also noted that he showed “[i]mprovement in daily life skills.” CP 125.

⁵“ . . . Respondent: . . . [A]s a result of a mental disorder manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over actions, is not receiving such care as is essential for health and safety.” CP 125.

This combination of preprinted findings and additional written findings comport with the findings of fact necessary to establish prong (b) of grave disability. Under *LaBelle*, the evidence for civil commitment “must include recent proof of significant loss of cognitive or volitional control” and “a factual basis for concluding that the individual is not receiving or would not receive, if released, such care as is essential for his or her health or safety.” *In Re Det. of LaBelle*, 107 Wn.2d at 208. The evidence must also show that the person is unable to make rational decisions about their need for psychiatric treatment. *Id.*

C.M.’s aggressive, disorganized, and impulsive behavior satisfies the legal requirement for recent proof of loss of cognitive or volitional control. CP 125. Dr. Coyle felt that C.M.’s cognitive and volitional functioning was severely impaired and that this would directly interfere with his ability to seek appropriate care independently in the community. VRP 196-97. Dr. Ruiz felt that C.M.’s condition would deteriorate even further and that he would not seek appropriate care or continue his vitally important medication regimen if he were released. VRP 243-44, 246-47. Neither doctor felt that C.M. had full, rational insight into his need for continued treatment. VRP 190-91, 196-97, 233-44.

From this evidence, the trial court also properly concluded that C.M. would be at high risk of re-hospitalization if released, as he would not

receive essential care if he were not in a secure hospital setting. CP 125 (referencing the “ ‘revolving door’ of mental health treatment”). Finally, the court’s findings that he lacked insight into his need for psychiatric treatment established that he could not make a rational decision about his need for treatment. CP 125. The trial court’s findings of fact were sufficient to establish that C.M. met legal criteria for civil commitment under prong (b) of grave disability.

B. If this Court Reverses, the Remedy is Striking the Unsupported Basis for Commitment, Not a New Trial

If this Court reverses, it may remand to the lower court to strike the unsupported basis for commitment and enter an amended order. Normally, the appropriate remedy would be dismissal of the civil commitment action, but only where no other grounds for commitment were proven. As this Court has previously ruled that negative collateral consequences flow from a grave disability finding, even if the underlying order has expired and other bases of commitment go unchallenged, the correct remedy is ordering the lower court to strike that basis for commitment. *Cf. In re Det. of B.L.R.*, 2020 WL 3254142, at *4 (unpublished) (ruling that appeal on one basis of commitment is not moot even if other bases are unchallenged, but not describing proper remedy if reviewing court finds there is insufficient evidence to support the challenged basis).

V. CONCLUSION

C.M. is severely mentally ill and meets criteria for civil commitment under both prongs (a) and (b) of grave disability. The trial court's individualized findings of fact, combined with the preprinted findings that specifically incorporated the statutory requirements, sufficiently supported its ruling that C.M. met civil commitment criteria on that basis. Since the State need only prove one prong of grave disability for this Court to affirm on appeal, if this Court finds that one prong has been established, C.M.'s argument necessarily fails. Furthermore, if this Court reverses on grave disability the proper remedy is not a new trial—the Court may direct the lower court to strike the finding of grave disability without disturbing the multiple other bases for commitment that are unchallenged on appeal.

RESPECTFULLY SUBMITTED this 31st day of August, 2020.

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PROOF OF SERVICE

I, *Christine Townsend*, state and declare as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein. On August 31, 2020, I served a true and correct copy of this **BRIEF OF RESPONDENT** and this **CERTIFICATE OF SERVICE** on the following parties to this action, as indicated below:

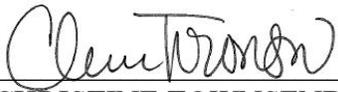
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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 31st day of August 2020, at McCleary, Washington.



CHRISTINE TOWNSEND
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SOCIAL AND HEALTH SERVICES DIVISION, ATTORNEY GENERALS OFFICE

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