

The News Tribune Special Report: 'Boarding' the mentally ill

Throughout the state, people with mental illness are languishing in hospital emergency rooms, deprived of their right to mental health treatment. Judges say the practice violates civil rights. State attorneys say the hospital rooms are safe, and better than nothing - but troubling incidents suggest otherwise ...

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Read more here: <http://www.thenewstribune.com/2013/07/14/2677007/boarding-the-mentally-ill.html#storylink=cpy>

Friday, June 14, 2013: The woman walked on the beach and drank. She decided to swim to the Russian submarine floating offshore. She knew an extraterrestrial was waiting for her.

She was an extraterrestrial, too, but she didn't think she could make the swim; the sub was a long way off. She would swim and drown. That would be all right.

She's 37, from Ocean Shores in Grays Harbor County. Her initials are D.P. She didn't drown.

Emergency crews fished her out of the surf and airlifted her to Tacoma General Hospital, where she was medically cleared but deemed mentally ill. Diagnosis: depressive disorder. She was suicidal.

By law and by right, she was entitled to mental health treatment. She didn't get it. Instead, she spent the weekend parked in the emergency department.

Three days later, a two-man ambulance crew brought her to Western State Hospital in Lakewood on a gurney. She spent another six hours sitting in a hall outside a courtroom, waiting for the mental health bed she'd been denied despite a court order — another wanderer in the barrens of a broken system.

She was one among thousands of people with mental illness facing the same problem across the state: "boarded" for days in hospital rooms without the treatment they're supposed to receive, amid a statewide shortage of beds and a series of crippling budget cuts. In Pierce County alone, 842 people were boarded during a 10-month span in 2012.

THE BIG PICTURE

Psychiatric boarding is a legal procedure, but Pierce County Superior Court Judge Kathryn Nelson recently upheld a lower court's ruling that the practice is unconstitutional and can't be used solely to ease overcrowding at mental health treatment centers.

The decision — a potential statewide precedent — sparked a debate between state attorneys and mental health advocates that's headed for the state Court of Appeals. State and county attorneys argue that hospital beds are a safe, secure stopgap. Public defenders say the practice deprives patients of their rights. Attorneys for local hospitals say they don't have the facilities to provide adequate mental health treatment.

Nelson's ruling hasn't taken effect yet. On June 10, after a contentious hearing, she granted a six-month stay, until Dec. 10.

A week later, county Court Commissioner Mark Gelman threw another log on the fire. From the bench at Western State Hospital, he cited the prior court rulings and ordered that D.P. had to go to a mental health treatment center immediately — not an emergency room.

While attorneys argue and patients such as D.P. languish in hospital rooms, another legal threat looms: a lawsuit filed in Pierce County Superior Court last fall, squarely aimed at psychiatric boarding.

The suit centers on a Fircrest man who slipped into a psychotic fog and assaulted a stranger at a bus stop in October 2009. Despite the pleas of the police officer who arrested him, the man was sent to the emergency department at St. Clare Hospital in Lakewood, where he assaulted a woman visiting a sick friend.

Two days later, the man threatened to kill President Barack Obama.

AT WESTERN STATE

June 17, 2013: D.P. entered Pierce County's civil commitment court at Western State shortly after 9 a.m. She was first on the docket. Two ambulance drivers from Rural Metro — one taller, one shorter — rolled her in on a gurney.

She wore blue hospital scrubs, yellow non-scuff socks and a plastic wristband with her name on it. The drivers sat in the audience and watched. They were on the clock, waiting for an outcome and their next stop.

Such commitment hearings run every day at Western State and similar courts throughout Washington, but the process is opaque, largely hidden behind a web of privacy rules. Hearings are open to the public. Underlying court records — including schedules, case numbers, dockets and dates — are not. When covering commitment hearings, The News Tribune abides by a January court ruling that requires identifying patients solely by their initials.

The players change at the hearings. The roles don't. Deputy Prosecutor Ken Nichols spoke for Pierce County and the state. Tim Owen-Evans, an assigned defense attorney, spoke for D.P., the patient. Mark Gelman, the court commissioner, presided.

D.P. sat by her lawyer and watched while everyone talked about her. At times, she absently fingered a lock of hair.

The audience included one observer with a direct stake in the outcome: Eric Neiman, an attorney who represents Tacoma General, the MultiCare Health System and the Franciscan Health System. The hospitals don't like psychiatric boarding. They've argued against it in court. D.P.'s hearing represented a fresh test of the recent court decisions in Pierce County.

The question for the day: whether D.P. should be involuntarily committed because of her mental status. In court shorthand, it was a 14-day hearing — the shortest possible commitment span, and the most common type, below the threshold for a longer-term stay at Western State.

The first witness was Dane Christensen, a designated mental health professional from Pierce County. He evaluated D.P. after she was airlifted to the hospital.

"She said she was suicidal," Christensen testified.

She denied depression and minimized the severity of her situation, Christensen said. Diagnosis: depressive disorder.

Nichols uttered the magic words, standard legal phrases tied to involuntary commitment, words that allow the state to hold people against their will.

Was D.P. gravely disabled? Christensen said yes.

Did she present the likelihood of serious harm to herself? Christensen said yes.

Was she ready for a less-restrictive alternative — something short of involuntary commitment?

“No,” Christensen said.

Done. D.P. needed a mental health bed at an evaluation and treatment center — an ET.

Problem: She arrived from another county. That pushed her to the back of the line in Pierce County, which meant parking her at the Tacoma General emergency department in procedural limbo. A local bed was as elusive as a Russian submarine.

“Out-of-county clients typically don’t go to our ET beds,” Christensen said.

Owen-Evans, the public defender, turned to D.P.

“Are you opposed to getting more inpatient treatment at this time?”

The witness was articulate, coherent and alert.

“At this time, no, I’m not,” she said.

Did she have issues with staying in the hospital ER?

“Yeah, yeah — definitely,” D.P. said. “I feel like I’m not getting some medications I should receive there. It’s an emergency department. It’s not designed for humans with my needs.”

Nichols stepped in for a cross-examination.

“You indicated that you’d rather not go back to an ER — but if that’s what it takes to keep you safe ...”

D.P. listened.

“I understand your argument,” she said. “You know, it makes ethical sense.”

She said she wasn’t getting her medications at the hospital. Normally she was allowed to have them. They affected her psyche. She didn’t want to go back to the emergency room.

Nichols asked whether her only complaint about the emergency room was lack of meds.

“No,” D.P. said. “I don’t think it’s healthy for me to be warehoused to a bed. Most physicians want their patients up and walking around. I don’t like it. I’m told it’s to keep me safe.”

Owen-Evans called another witness: Thomas McNeely, a mental health professional who had been working the night shift in Tacoma when D.P. arrived at the hospital after her near-drowning.

“Like anyone trying to swim in the Pacific Ocean at this time of year, she lost,” he said.

McNeely had searched for a bed, checking statewide lists — a nightly routine, he said.

He called Thurston County — no good. He called two places in King County and hit dead ends. He called Harborview Medical Center in Seattle — no. He checked Pierce County, where OptumHealth, a private company, oversees local mental health services under a contract with the state.

The state lists said Optum had four treatment beds. That was rare. Usually, the beds were full.

“I thought OK, we’ve got four beds in our county at that moment,” McNeely said. “I’ve been told if I wanted to put someone out of county in one of our beds, I had to call Optum and they would authorize it or they wouldn’t.”

McNeely said he called and spoke to Keith Lewis, an Optum manager, who had rejected D.P.

“He said, well, that person needs psychiatric care, but we will not use one of our beds to do that,” McNeely said.

Owen-Evans underlined the point. Optum had available beds, but wouldn’t take D.P.?

“Yes.”

McNeely said the conversation verged on a screaming match.

Nichols, the prosecutor, stepped in again.

“So you talked to Keith Lewis at Optum?”

“Mostly he talked to me, but yes,” McNeely said.

“When Mr. Lewis said no, did you ask him why?”

“No,” McNeely said. “I felt like I had been given my marching orders.”

That was it for the witnesses. Closing arguments followed.

Owen-Evans said D.P. was willing to accept involuntary treatment — at an evaluation and treatment center, but not an emergency room.

Nichols, knowing he had to argue for returning D.P. to the ER, tried to thread a needle.

“If the choice is between discharging her or having her stay in a hospital room, it seems like it’s preferable for someone who came close to losing her life,” he said. “Release doesn’t seem appropriate.”

Gelman, the court commissioner, worked quickly. He rattled off the magic words: gravely disabled, suicidal ideation, likelihood of serious harm. A 14-day commitment was appropriate, but where?

Not Tacoma General — he cited the recent court decisions governing boarding at emergency rooms.

“I’m ordering that she be housed at Telecare or Greater Lakes,” he said, referring to two local ETs overseen by Optum. “She is jurisdictionally a patient of Pierce County. I won’t order her back to Tacoma General.”

He spoke swiftly, but the words hung in the air. It was official: D.P. was Pierce County’s burden. Three days earlier, Optum had open beds. Today, the local treatment centers were full. From the bench, Gelman kicked the door open.

“It’s up to you, Mr. Nichols,” he said. “And your client and Western State Hospital. I’m ordering placement. You and your clients can discuss how they’re gonna work that out.”

Gelman added that ignoring his order would invite a ruling of contempt.

Nichols pleaded. It would take time to find a bed. Wouldn’t it be better to send the patient back to Tacoma General, just as a stopgap, as opposed to having her wait in the hall outside the courtroom?

Nichols shot a look at Owen-Evans, a legal cue: If the defense would agree, D.P. could be returned to the emergency room, at least temporarily.

Owen-Evans turned to his supervisor, defense attorney Chris Jennings, who oversees the public defender’s mental health advocacy team.

Jennings, sitting in the audience, shook his head — no agreement.

“She has to stay here.”

Gelman cut in, rising from the bench.

“I think my decision’s unambiguous,” he said. “I’ll leave it to you folks to figure that out.”

With that, he walked out and the hearing ended.

D.P. and the ambulance drivers ambled into the hall. D.P. sat on a bench, near the gurney she rode in on. Neiman, the hospital attorney, stepped over and offered to get her something: water, something to eat. D.P. said she didn’t need anything.

Nichols, stuck with a dilemma, couldn’t hide his sarcasm.

“Well, Eric, you can’t just walk away,” he said to the hospital attorney. “Now we have a patient in the hall. That’s vastly superior to an ER.”

The attorneys drifted into rooms off the main hallway — one for defense, one for prosecutors — and started working the phones.

Back in the courtroom, a new hearing began: another patient on a gurney.

D.P. sat on the bench and chatted with the shorter ambulance driver. The clock ticked.

THE LAWYERS

Pierce County Superior Court, June 10, 2013: A week before D.P.’s hearing, four lawyers and a judge fussed over the wording of a court record that threatened to change the course of state mental health policy.

The judge was Kathryn Nelson. The hearing represented the aftermath of a decision she made in May. She upheld an earlier ruling by Court Commissioner Craig Adams: Boarding mentally ill patients in emergency rooms without treatment violated state and federal law.

That was significant — a precedent. Nelson was the second rung on the legal ladder. The third was the state Court of Appeals. The lawyers were climbing up, but first they had to perfect the appeal.

They were also arguing whether Nelson’s ruling would take immediate effect — a potentially shattering outcome. Theoretically, it meant the immediate release of mentally ill patients parked too long in hospitals.

The lawyers knew each other — they’d argued for months, in and out of court. This was the latest round of two-on-two.

The teams:

- Ken Nichols, representing Pierce County.
- Sarah Coats, assistant attorney general representing the state Department of Social and Health Services.
- Chris Jennings, public defender of the patients.
- Eric Neiman, representing the MultiCare and Franciscan health systems.

The arguments were tedious and critical. The county and the state opposed Nelson’s ruling. The public defender and the hospitals supported it. Both teams wanted to preserve their best bits for the appeal and cut the portions that hurt their positions. It was war disguised as copy-editing.

Nichols and Coats focused on a briefing filed by Neiman, the hospital attorney. They wanted a large chunk removed — almost two pages.

The chunk described the conditions mental patients faced in local hospital rooms. The portrait was bleak:

Patients at MultiCare facilities seldom, if ever, have direct access to psychiatrists or clinical psychologists in the inpatient setting; the facilities are not designed to safely house and care for mental patients. ...

Patients in MultiCare’s acute care hospitals are often held for weeks on end, with very limited ability to move about, interact with others or even exercise beyond the immediate confines of their assigned room or boarding area. ...

None of the MultiCare hospital rooms in Pierce County is designed to house patients with mental health issues, and as a result these patients are often assigned a “sitter” whose sole job is to observe the patients and keep them safe from harming themselves during these stays. Many of the SBC (single-bed certification) patients “escalate” their behaviors over the duration of the SBC, increasing staff anxiety, patient anxiety and risk of harm to the patient and others, including staff. ...

When these patients “act out” in these settings, staff often lacks the skills that a fully trained psychiatric nurse might have to be able to recognize and “de-escalate” these situations before physical intervention is needed. Thus, both the patient and staff, as well as other patients and visitors, are often placed at risk of harm when these patients become frustrated after being held for days, weeks and even months under SBC holds.

— *Excerpt from court briefing*

There was more. Nichols and Coats argued for cutting all of it. It wasn’t part of the original record that led to Nelson’s ruling.

Jennings and Neiman argued to keep it. The hospital perspective was relevant.

“It would serve no purpose to strike those portions of the brief,” Jennings said. “It would no longer outline how this case affects the hospitals.”

Nelson pondered and agreed to cut the language.

The state and the county had scored a point — but the image of mental patients escalating and acting out in hospital rooms didn't vanish. It hovers over a lawsuit filed in September 2012, involving a mentally ill man parked in a hospital emergency room. The trouble started at a bus stop.

ALEX

Oct. 6, 2009: Fircrest police officer Shaun Crutchfield pumped gas into his patrol car. It was 10:45 a.m., a routine morning on duty.

A 56-year-old man broke the calm, rushing up to say someone just punched him at the bus stop on the corner.

Who? Crutchfield asked.

The man pointed: "That guy there."

Crutchfield went over. The guy was 24. His name was Alex.

Crutchfield asked Alex if he hit the other man.

"Yes," Alex said. "I thought he was Satan."

I placed Alex in handcuffs and in the rear of my patrol car, double-locking the cuffs. Alex leaned his head back and yelled he was breathing fire. Alex talked to and answered himself about promising to do what Satan told him to do, mentioning 'yogurt' several times. Alex told me Satan was sitting in the rear seat with him and he was clearly frightened.

— *Fircrest police report, 10-6-09*

The man who got punched didn't want to press charges. Crutchfield called the hotline number for OptumHealth.

The woman at the other end of the line suggested taking Alex to a hospital emergency room. Crutchfield said that was unacceptable — this man was too violent to go to an ER. The woman said she'd have a crisis team call and set up a mental health screening.

Crutchfield waited, watching the man in the back seat.

Alex had been wandering all night. He was a paranoid schizophrenic with a history of mental health issues. Tacoma police had encountered him twice in the past 12 hours — he'd had a fight with his wife over taking his medications. According to one report, he'd tried to carjack someone with a pocket knife. Police had taken the knife away and released him.

AT WESTERN STATE

June 17, 2013: Dane Christensen, the mental health professional, punched keys on his mobile. He was hunting a bed for D.P., the suicidal patient ordered into treatment but forbidden by court order from returning to a hospital emergency room.

D.P. sat on a long bench, curled one leg under the other and talked to the shorter of her two ambulance drivers.

"It's nice getting out of the emergency department," she said. "God, I was tired of that place."

The ambulance driver nodded. His partner, the taller driver, hung around in the court clerk's office with nothing to do. Where would they take D.P.? What about the rest of the day's calls?

Another commitment hearing was already running in the Western State courtroom, with another to come after that. Three ambulances from Rural Metro stacked outside.

D.P. fingered her hair and wondered about her stuff — the personal belongings she left at Tacoma General. Could those be retrieved?

The ambulance drivers wondered, too. From their standpoint, it didn't matter where D.P. went — one route or another, they knew them all — but technically, she still had to be discharged from Tacoma General. It was a paper process, but it was mandatory.

Christensen closed his phone after a talk with Optum.

"There aren't any beds anywhere," he said.

Owen-Evans, the defense attorney, shook his head.

"They should have given her one when they had one."

Nichols, the prosecutor, was working phones as well. D.P., listening to the flurry of conversations, kept hearing one word over and over: Fairfax, a private mental hospital in King County.

"Fairfax — where's that?" she asked.

"Kirkland," her driver said.

The clock ticked past 11 a.m. D.P. had been waiting for two hours.

THE LAWYERS

Pierce County Superior Court, June 10, 2013: The lawyers hunted typos in the draft of the legal appeal regarding psychiatric boarding.

It looked like nothing, a debate over footnotes. It wasn't. Sarah Coats, the state's attorney, was still battling for advantage. The draft contained a few negative phrases that hurt the state's position. One said hospitals couldn't provide individual treatment to people with mental illness.

That was the big idea, the reason the lawyers had been arguing since February. If hospitals couldn't provide the treatment guaranteed by state and federal law, the patients were denied their rights.

Coats wanted the language gone.

Jennings, defending the patients, objected. Lack of treatment at the hospitals was a fact. The fact had a legal effect: loss of liberty.

Nelson, the judge, sided with Jennings. The language stayed. Hospitals were a more restrictive environment. They didn't provide mental health treatment.

All that remained was timing: deciding whether Nelson's ruling would take immediate effect or granting a stay until a higher court could decide.

Now or later — that, too, was a big idea. "Now" meant anyone parked in an emergency room for too long could be released on the spot, with no treatment at all.

ALEX

Fircrest, Oct. 6, 2009: Officer Shaun Crutchfield was waiting for a call from Optum. His arrestee, Alex, banged his head against the partition of the patrol car.

At 11:15, Crutchfield's phone rang. He spoke to Jase Knievel, an assistant manager at Optum.

Crutchfield said taking Alex to an emergency room was a bad idea.

Knievel said the ER was the only option. He would send a crisis team.

Alex raved in the back seat.

"I will, I will — yes I will!" he said, talking to someone who wasn't there.

Crutchfield asked who Alex was talking to.

"Satan," Alex said.

What was Satan telling him to do?

"Yogurt," Alex said, writhing.

Crutchfield barked at his phone. The man in the back seat couldn't go to an ER. Too many people would be there. He needed a secure facility. His training said he could take Alex to Western State.

Knievel again said an ER was the only option. He would send a crisis team.

I told Jase that Alex was too combative to go to an ER and there are people around him at the ER. I told Jase that he needs a secure facility and I was going to take him to Western State. Jase told me he could not be sure there would be room for Alex at Western State. I told Jase I was not going to go to the ER with him.

— *Fircrest police report, 10-6-09*

Crutchfield drove south, to Lakewood and Western State.

AT WESTERN STATE

June 17, 2013: D.P., still waiting for a mental health bed, sat on a bench, engrossed in deep chat with the shorter ambulance driver. It was 11:30 a.m.

A few feet away, in a room off the hall, deputy prosecutor Ken Nichols argued on the phone, trying to explain the court's order to provide D.P. an immediate bed at one of Optum's treatment centers. He spoke to an Optum boss. Her voice crackled over a speaker.

"I would send the person back to Tacoma General ASAP," the voice said.

Nichols argued; that was exactly what he couldn't do. He was facing a direct order from the court.

The taller ambulance driver leaned against the wall in the hall, eavesdropping and sighing.

"Three-quarters of our day on one call," he said.

The phone on the driver's hip buzzed: his supervisor at Rural Metro wanted an update. The driver found a corner and explained. Optum wouldn't give D.P. a bed, and insisted on sending her back to Tacoma General, but the judge said she couldn't go back to the ER.

The supervisor gave the word. Rural Metro wasn't going to ignore a court order.

The taller driver told Dane Christensen, the mental health professional, who turned to Nichols and handed him another headache.

“Their supervisor won’t let them transport her back,” Christensen said.

On the bench nearby, D.P. talked to the shorter ambulance driver about the nature of the universe.

“I think we’re dealing with supernatural forces here,” she said.

The driver nodded.

“There’s a lot of big question marks,” he said.

The clock ticked. Noon. The court recessed for a lunch break. D.P. had been waiting for three hours.

ALEX

Oct. 6, 2009: Shaun Crutchfield hit Western State at noon — a cop carrying a dangerous passenger. The hospital gates were closed.

... They refused admittance because they were full and this is not normal for an officer to take mental patients to them. I told both the Western State Hospital security and dispatcher that the only other option was a hospital ER and that was not acceptable due to the assaultive behavior of Alex.
— *Fircrest police report*

Crutchfield hoped to place Alex in Western State’s crisis ward, which had opened a few weeks earlier. The security guard said it wasn’t open yet, and other beds were full.

Crutchfield waited with Alex — still cuffed — in the hospital foyer.

Alex’s wife came. She’d been trying to track him for the last 12 hours. She gave him some Powerade.

The three sat for 90 minutes. At 1:30 p.m., a mental health professional arrived. She looked Alex over, turned to Crutchfield and said an ER was the only option. She called St. Joseph Medical Center in Tacoma.

The hospital refused to accept Alex; staff members mentioned a run-in with him the night before. The mental health professional called St. Clare in Lakewood. The hospital agreed to take Alex.

Crutchfield requested an ambulance. When the ambulance crew arrived, he warned them to be careful. The crew strapped Alex into a gurney and drove away.

THE LAWYERS

June 10, 2013: The lawyers were finished with their revisions.

They had one last point to argue: a stay, pending appeal. Attorneys for the state and the county wanted it.

The essence of the court’s ruling held that people with mental illness couldn’t be parked in hospitals solely because of overcrowding at local treatment centers. No vacancy was no excuse.

Coats, the state’s attorney, argued that parking was a practical necessity. Otherwise, potentially dangerous people might be released into the community. Perhaps hospitals weren’t ideal — but they were better than nothing.

“Even a hospital is a warm, secure place,” Coats said.

Judge Nelson shot back. That wasn’t the issue, and it wasn’t part of the original record.

“Show me in the record where it says a warm, secure place,” she said. “Safe and warm — I don’t see that anywhere in this.”

ALEX

Oct. 6, 2009: Lakewood police officers rushed to St. Clare Hospital. Alex, the patient brought in two hours earlier despite the protests of a Fircrest police officer, had attacked a woman in the ER.

Her name was Natalie Howell. She was 51, visiting a sick friend. She was standing in the doorway of the room when someone kicked her from behind.

She turned and tried to defend herself. A man she didn’t know punched her in the face. She fell. The man kicked her again and beat her, swinging his arm like a windmill.

The man said nothing. He had “a weird smirk on his face,” she told police.

“He started punching me in my face, then kicked me in my stomach, then started beating the hell out of my back, head and face. ... I couldn’t even count how many times he repeatedly beat me with a closed fist.”

— *Victim statement, 10-6-09*

A nurse rushed to intervene. Alex punched her. Hospital security officers gang-tackled him and strapped him to a bed.

The Lakewood cop interviewed witnesses, and then spoke to Alex. Why had he attacked the woman?

Alex looked at him strangely.

“What are you talking about?”

Alex said he sometimes went to another universe and did strange things. People talked to him in his head.

The officer ran a quick records check, and found the earlier report filed by Fircrest police. He called a sergeant. The sergeant said the Pierce County Jail wouldn’t take Alex due to his mental condition.

The officer relayed the information to the emergency room staffers at St. Clare. They said Alex would be transferred to another hospital.

In the space of 24 hours, Alex had been involved in two unprovoked assaults and attracted attention from three police agencies. The Fircrest officer who detained him had argued vehemently against placement in a hospital ER, to no avail.

THE LAWYERS

June 10, 2013: Judge Nelson was beginning to wonder whether she should grant a stay of her ruling. Coats, the state’s attorney, wasn’t persuading her.

Nichols, the county prosecutor, took a shot. Local governments around the state, facing similar gluts of mentally ill patients, were watching this argument closely.

“I think the court should be mindful that this is a fairly significant rule,” he said. “We have gotten calls from King County, wanting to know when this is going into effect.”

The problem was liability, Nichols said. Nelson’s ruling created a potential risk. Suddenly, parking a mental patient in a hospital could get the government sued.

“Anyone involved in the system of detention is not held liable for doing that,” Nichols said. “So you’re putting them in a real tough bind here.”

Better to grant a stay and let the next court sort it out, Nichols concluded.

Jennings, the public defender, disagreed. This wasn’t about the state’s risk — it was about the patients’ rights.

“Their liberty is what’s on the line here,” he said. “Staying that ruling on their civil rights stays access to justice.”

Jennings played an ace: The state was crying wolf, presenting a worst-case scenario where potentially dangerous people would be released — but that argument ignored the court record.

If local mental health beds were full, the secretary of DSHS had the authority to open extra beds at Western State, he said. That was in the record. The practice was common at Eastern State Hospital in Spokane; state officials had testified to it.

“It is entirely within their power to avoid that worst-case scenario,” Jennings said.

Nelson caught the point and asked an obvious question.

“So if the secretary used his discretion, there would be no release of any potentially dangerous people out into the street because they would be provided a place out at Western State Hospital, where there are professionals trained to provide them the mental health care they need?”

Jennings nodded.

“Correct,” he said.

It was a big moment. Coats knew it.

“The state can’t miraculously open wards at \$3 million a ward,” she said. “It is not an option to open up Western State Hospital.”

Nelson wondered why.

“It’s not an option because of money?” the judge asked. “Why does Western State get to say we don’t have the money, yet the other hospitals that don’t provide mental health treatment don’t get to say that? These hospitals are not mandated under law or anything else to participate in this.”

A flurry of argument followed, but Nelson’s lean was plain.

“We don’t detain people and restrain their liberty without providing care and treatment,” she said. “We don’t house them in one room, whether the jailer is the Pierce County Jail or whether the jailer is the hospital. The individuals are not safe and warm in the hospital. The individuals are essentially incarcerated against their will. ... Those people are not in my view any more safe and may in fact be harmed by the fact that their freedom of movement is restricted, and they are confined to a room, not just for 72 hours, but for up to 17 days.”

Coats kept fighting. If Nelson’s ruling stood, the state would not be liable, according to earlier court rulings. The responsibility for treatment fell to the county regional support network (RSN), which meant Optum, the local mental health provider.

“It is a county or RSN’s obligation,” she said. “It is absolutely not the state’s.”

Nelson countered again: Optum, alone in the state, had no direct ties to the county where it was operating. Pierce County had pulled out of mental health service in 2008, forcing the state to take control — and DSHS hired Optum.

“We don’t have an RSN that’s attached to a county,” Nelson said. “We have an RSN that’s contracted directly with the state. The state is directly running this RSN. This one does not have the county as a partner.”

Nichols argued one more time for a stay. Whatever the outcome of the argument, the problem couldn’t be solved instantly.

“We’re scrambling,” he said.

Nelson relented and granted a stay.

“The most I can do at this time is to maintain the status quo for another six months,” she said. “I’m reluctant to stay it any longer. I hesitate to just leave it open-ended.”

AT WESTERN STATE

June 17, 2013: By 1 p.m., the courtroom lunch break was almost over. D.P. had been waiting for four hours. Someone offered her a hamburger. She declined. Still sitting on the bench in the hall, she told the shorter ambulance driver a story about a titanium filling that left her jaw aching. The driver offered his own tale of dental horror.

While D.P. waited, court resumed. Another commitment hearing started. The taller ambulance driver sat in, antsy, waiting for word on D.P., knowing this unrelated hearing had to end before he got it.

Nichols was back on duty, arguing to extend the detention of a Pierce County man who refused to take his medication while referring to himself as God and Jesus Christ.

After preliminaries, Nichols sought telephonic testimony from Carly Martinez, manager of Recovery Innovations, an evaluation and treatment center in Fife that contracts with Optum.

Nichols fiddled with a spider-shaped speakerphone, placed on a table between the attorneys and the judge. He’d prepared beforehand, sending a subpoena to the treatment center. He’d called Optum bosses earlier to let them know.

The evidence was standard stuff: Nichols needed Martinez to explain how the man who called himself God had behaved in treatment.

Nichols punched buttons and waited for rings. A receptionist answered.

“Recovery Innovations.”

Nichols asked to speak to Carly Martinez. He identified himself and explained that he was calling from the courtroom.

The receptionist put him on hold. The speakerphone beeped for a long time. No response. Silence filled the courtroom.

Nichols hung up and dialed again.

“Recovery Innovations.”

Nichols repeated his spiel and asked to speak to Martinez.

“She’s with a customer. Can she call you back?”

Nichols said no. He was calling for testimony. Court was in session.

The receptionist put him on hold. The phone beeped.

The taller ambulance driver, sitting in the audience, bent his head and exhaled.

The speaker crackled.

“Are you being helped?” a voice asked.

“We’re waiting for Carly,” Nichols said, wearily.

“OK, one moment,” the voice said.

The phone beeped. Eventually, someone answered. It wasn’t Carly.

The voice said Martinez wouldn’t testify in open court — that was company policy.

Nichols said he’d called Optum beforehand to straighten this out.

“Did you see the subpoena I faxed over to you?”

The voice said Recovery Innovations wouldn’t testify against its own patients.

“What you’re telling me,” Nichols said, “is Ms. Martinez is refusing to testify.”

The voice said Martinez would testify if ordered by a judge.

Nichols, looking at Gelman, said the judge was right here.

Gelman looked at Nichols and offered a low-voiced suggestion.

“Do you want to contact their employers’ attorneys and see if they have any objection?” the judge said.

Nichols turned to the speakerphone.

“Do you have a phone number for your legal counsel?”

“I can give you our Quality Support and see if they can put you in touch with our attorneys,” the voice said.

Nichols gave up and hung up. It was 1:30 p.m.

Outside the courtroom, D.P. sat on the bench in the hallway. Someone had given her a pillow. Her wait approached its fifth hour.

She talked to the shorter ambulance driver, telling him another story.

“He’s making money off the plants I grew for him,” she said. “I was supposed to get money for that.”

“Yeah,” the driver said.

ALEX

Oct. 8, 2009: Alex was never charged with a crime. Two days after attacking the woman at St. Clare, he landed in a secure ward at Western State — where a police officer had tried to take him in the first place.

While there, he threatened to shoot President Obama with a high-powered rifle. The staff called 911. Two Lakewood police officers responded.

Alex was strapped down. He thought the police officer was his father. He admitted he wanted to kill the president. He added he wanted to kill his own wife. Then he said he didn't want to do any of those things. Then he said he did.

Officers notified the U.S. Secret Service — standard procedure, though they didn't believe Alex presented a credible threat.

Records of his detention and mental health treatment are closed to the public, but sources tell The News Tribune he was held at Western State for 90 days and then released in January 2010. He returned to the state hospital in August 2012, and was released to his family last November.

Alex and his wife divorced in 2010. She spoke to The News Tribune in a recent interview and asked for anonymity.

She thinks Alex was denied the treatment he needed. She calls him her best friend, but she can't live with him.

“He became a danger to me,” she said.

A lawsuit tied to his actions in 2009 was filed last September. It's in the early stages, with a trial tentatively scheduled for 2014.

Filed on behalf of the woman who was assaulted, the suit names the Franciscan Health System as a defendant, as well as Greater Lakes Mental Health, the Optum subcontractor that directed Alex to a local emergency department. The treatment center and the health system have denied liability.

AT WESTERN STATE

June 17, 2013: At 2 p.m., the breakthrough finally came for D.P. — Fairfax, the mental hospital in Kirkland, had a free bed.

The next step was a quick hearing in front of Gelman, seeking permission to let D.P. go back to Tacoma General for formal discharge — and to pick up her stuff.

“All right,” the judge said. “We'll send her back there to pick up her things.”

The taller ambulance driver pumped his fist: Finally — movement, after six hours.

A little earlier, D.P. had chatted with the shorter ambulance driver about a dispute with a friend.

“I told him, you know, with great power comes great responsibility,” she said. “And he got mad and said you got that from Spider-Man.”