

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

(1) LESLIE BRIGGS, as next friend of T.W. )  
and B.S.; )  
(2) EVAN WATSON, as next friend of C.R.; )  
and, )  
(3) HENRY A. MEYER, III, as next friend )  
of A.M., for themselves and for others )  
similarly situated, )

Plaintiffs, )

v. )

Case No: 23-cv-81-GKF-JFJ

(1) ALLIE FRIESEN, in her official capacity )  
as Commissioner of the Oklahoma )  
Department of Mental Health and )  
Substance Abuse Services; and )  
(2) DEBBIE MORAN, in her official )  
capacity as Interim Executive Director of the )  
Oklahoma Forensic Center, )

Defendants. )

**JOINT STATUS REPORT**

The Parties submit this joint status report in advance of the November 18 status conference to: (i) summarize the modifications to the original Consent Decree agreed to by the Parties and the Governor at the November 13 settlement conference; (ii) advise the Court of the Parties’ position with respect to obtaining Contingency Review Board approval of the modified Consent Decree; and (iii) discuss issues related to whether Plaintiffs are required to seek preliminary approval of the modified Consent Decree or provide amended notice to the Class.<sup>1</sup>

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<sup>1</sup> Counsel at Hall Estill recently retained by the Governor on behalf of the Defendants (*see* Doc. 76, p. 2), reviewed this Joint Status Report prior to filing. Counsel’s only objection is that Hall Estill should have been added to the signature block as Defendants’ counsel.

### **Modifications to Original Consent Decree**

On November 13, 2024, Adjunct Settlement Judge Lane Wilson conducted a settlement conference with the Parties and the Governor's recently retained counsel. As a result of the settlement conference, the Parties and the Governor agreed to certain modifications to the original Consent Decree. Furthermore, the Parties and the Governor agreed to use their best efforts to obtain expedited approval of the modified Consent Decree by either the Contingency Review Board or the Oklahoma Legislature. (*See* Doc. 82). Aside from clerical changes,<sup>2</sup> and the Court-ordered changes to the outpatient treatment component of the Community Based Restoration Treatment Pilot Program,<sup>3</sup> the Parties (and the Governor) agreed to the following changes to the original Consent Decree:

Paragraph 17 and 20 (Class Counsel). David Leimbach of Frederic Dorwart, Lawyers, PLLC is added as Class Counsel.

Paragraph 18 ("Best Efforts"). This definition is modified to allow Defendants, under limited circumstances, to cite a lack of legislative funding to excuse a failure to use Best Efforts.

In redline form, the changes to Paragraph 18 are as follows:

18. "Best Efforts" means taking reasonable steps, actions and measures, consistent with best professional standards, practices and guidelines to accomplish or bring about the intended and described result. Defendants may not use lack of ~~funding as an excuse for a failure to use "Best Efforts."~~ legislative funding as an excuse for a failure to use "Best Efforts," unless the Department first demonstrates that: (i) the Department used good faith efforts to obtain the needed legislative funding; (ii) separate and apart from the claimed funding deficiency, the Department otherwise took reasonable steps, actions, and measures, consistent with best professional

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<sup>2</sup> For example, hearing dates and docket numbers of filings that were previously left blank were filled in, and page numbers in the Table of Contents were adjusted to match the new pagination. Also, trivial typos were corrected.

<sup>3</sup> The Court-approved changes to Paragraphs 21, and 68 to 73 as proposed in the Parties' *Third Supplement to Joint Motion for Preliminary Approval* (Doc. 55), are incorporated into the modified Consent Decree. (*See* Doc. 56, p. 26).

standards, practices and guidelines to accomplish or bring about the intended and described result; and (iii) the lack of legislative funding must outweigh collectively all other causes of a failure of Best Efforts.

Paragraph 30 (the Plan). One sentence is added at the end of Paragraph 30, clarifying that Class Counsel’s consultation role throughout the Consent Decree “shall not include their participation in clinical decision-making, yet instead is a means for Class Counsel to fulfill ethical obligation to the Class and to the Court.”

Paragraph 31 (Qualified Forensic Evaluator). One sentence is added at the end of Paragraph 31, clarifying that “[n]othing in this Paragraph is intended to implicate the Oklahoma Administrative Procedures Act, namely 75 O.S. § 314.”

Paragraph 53 (dealing with Consultant’s compensation). The following sentence is added at the end of Paragraph 53 requiring the Parties to confer about a budget for Consultants’ expenses:

On or before December 31 of the first full year after final entry of the Consent Decree by the Court, and every calendar year thereafter, the Department and the Consultants shall in good faith confer to develop and propose a budget for the activities of the Consultant for the next following calendar year; provided such budget shall not be deemed a cap on the appropriate and reasonable Consultant fees actually incurred.

Paragraphs 58, 59, 60 and 61 (cessation of alleged statewide jail-based restoration program). Modifications to these paragraphs were made, in general, to clarify that the Department may provide restoration treatment to Class Members in jail, with the Consultant’s monitoring and approval, notwithstanding the requirement to cease operating the Department’s alleged statewide jail-based restoration program. The changes to Paragraphs 58, 59, 60, are reflected in redline below:

58. ~~Cessation of Current State-Wide In-Jail Restoration Program.~~ Plaintiffs dispute that Defendants ever implemented a legitimate state-wide competency restoration program consistent with generally accepted professional forensic standards. Within sixty (60) days after the Court enters this Consent Decree, the Past State-Wide In-Jail Restoration Program. The Department shall wind down and cease operating its

alleged state-wide in-jail competency restoration program, ~~with the exception of the In-Jail Restoration Pilot Program, as defined herein (see Paragraphs 74-76), as it existed on the date the Lawsuit was filed.~~ The Department shall ensure that the medical and mental health needs of Class Members involved in the alleged state-wide in-jail restoration program when this Consent Decree is entered are protected and not harmed by the cessation of the alleged state-wide in-jail restoration program under this Paragraph 58. Class Members, if any, who are already receiving medication competency restoration treatment services as part of existing mental health services when this Consent Decree is entered will continue to receive medication such treatment. The Parties acknowledge that the Sheriff of Tulsa County may be willing to dedicate a pod or pods of beds located within the Tulsa County Jail's campus for the Department to use for competency Restoration Treatment under this Paragraph, contingent, however, on the Department entering into a contract with the jail's governing authority in which the Department agrees to take exclusive responsibility for the Restoration Treatment program in the dedicated pods, ~~including legal custody of Class Members who are placed in the pod(s) for Restoration Treatment.~~

59. Nothing in this Consent Decree shall be construed as preventing the Department from providing Class Members in county jails with ~~necessary and appropriate medications, and related mental health treatment, as prescribed by a medical professional and other mental health services in accordance with 22 Okla. Stat. § 1175.6a.~~ treatment, therapy, or training which is calculated to allow any Class Members to achieve competency in accordance with 22 Okla. Stat. § 1175.6a, so long as such treatment, therapy and training are consistent with generally accepted professional forensic standards, as reviewed and approved by the Consultants. Any Class Member allegedly receiving such restoration treatment in jail is still subject to the Maximum Allowable Wait Times unless and until the Consultants verify that the Department has provided (or is providing) continuous legitimate, professionally acceptable restoration treatment to the Class Member.
60. The Department shall redirect the resources previously expended on its past alleged state-wide in jail restoration program to the other elements of the Plan, including but not limited to the In-Jail Restoration Pilot Program. ~~Notwithstanding anything to the contrary in this Paragraph 60, the Department may, in good faith, provide enhanced mental health services to Class Members while still incarcerated in jail, provided that the Maximum Allowable Wait Times still apply to any Class Members receiving such enhanced mental health services. Such enhanced mental health services may be subject to the approval of the jails' governing authority or the jails' authorized mental health providers, and the in-jail competency restoration services as permitted by the preceding paragraphs 58 and 59 of this Consent Decree.~~
61. The Parties recognize that some Class Members may be restored to competency based upon enhanced mental health services, including in jail competency restoration services under paragraphs 58 and 59...

Paragraph 63 (Forensic Inpatient Facilities and Staffing). The 90-day time period in which the Department must develop a staffing plan for the Oklahoma Forensic Center is enlarged to 120 days.

Paragraph 74 (In-Jail Competency Restoration Pilot Program). The final sentence of this Paragraph was deleted to harmonize with changes to Paragraph 58.

Paragraphs 96 and 98 (dispute resolution provisions). A sentence is added to Paragraph 96 to include among the list of issues the Parties may submit to the Consultants for mediation, disputes arising from “the budget or the fees of the Consultants.” Modifications are made to Paragraph 98 to: (i) clarify that the Court may shift fees to the Plaintiffs for unsuccessful motions to review Consultants’ Decisions, only if the Court determines the motion is “frivolous;” and (ii) excluding from the \$75,000 annual cap on Plaintiffs’ attorney fees prevailing party fees awarded to Plaintiffs for successful motions to review Consultants’ Decisions.

Paragraph 106 (Term of the Consent Decree). A sentence is added at the end of Paragraph 106 to permit the Department to apply to the Court for early termination of the Consent Decree if the Consultants determine, no earlier than three years after entry of the Consent Decree, that “the Department has achieved substantial compliance with the Plan for nine consecutive months.”

### **Contingency Review Board Approval**

The Legislature is out of session until it is formally convened on February 3, 2025. The incoming Speaker-Designee of the House, Representative Kyle Hilbert, and the incoming President Pro Tem Lonnie Paxon will be formally elected on January 7, 2025. The Attorney General has requested the Governor convene the Contingency Review Board that same day to vote to approve the modified Consent Decree. *See Ex. 1, Nov. 15 letter, from Attorney General Gentner Drummond to Governor J. Kevin Stitt.*

**Should the Court require preliminary approval and re-notice to the Class?**

The Parties are prepared to proceed in any manner the Court instructs. However, the Parties believe it's in the best interests of the Class, the alleged victims in the underlying state court criminal cases, and all other stakeholders to obtain the Court's final approval of the amended Consent Decree as soon as possible to expedite the implementation of the remedial measures required therein. The Parties believe the modifications to the original Consent Decree benefit the Class by, for example, clarifying the Department's obligations with respect to providing restoration treatment to Class Members who are in jail. (*See* modified Paragraphs, 58-61). Therefore, the Court may reasonably conclude that the Parties can proceed to final approval of the modified Consent Decree without requiring another motion for preliminary approval or re-notice to the Class. *See Childs v. Unified Life Ins. Co.*, 2012 WL 13018913, at \*7 (N.D. Okla. Aug. 21, 2012) (“[B]ecause the amendments do not foist any unfavorable new terms upon class members, the parties will not be required to re-notice class members as to the contents of the First Written Amendment to Settlement Agreement,” citing *In re Integra Realty Res. Inc.*, 262 F.3d 1089, 1111 (10<sup>th</sup> Cir. 2001) (district court did not abuse its discretion failing to advise class members of new opt out rights because the new right “merely expanded the rights of class members” and did not create “a risk that unfavorable terms would be forced upon some class members.”)).

If the Court is inclined to require re-notice, the Parties request the Court set a revised notice and objection schedule that maintains the January 15 hearing date for final approval. *See, e.g., DeJulius v. New England Health Care Emps. Pension Fund*, 429 F.3d 935, 946–47 (10<sup>th</sup> Cir. 2005) (in securities class action, mailing notice packets thirty-two days before the objection deadline was sufficient). Here, any concerns about re-notice timing are eased because the Class

Members have already obtained notice of the Consent Decree, and the few revisions are unlikely to be material to any Class Member's objections.<sup>4</sup>

The Parties stand ready to discuss any other issues or concerns the Court may raise at the November 18 status conference.

RESPECTFULLY SUBMITTED,

/s/ Paul DeMuro

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<sup>4</sup> Thus far, Class Counsel has received only favorable comments, and no objections, to the original Notice, which was served on September 30, 2024.

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that on the 18<sup>th</sup> day of November, 2024, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the applicable ECF registrants.

/s/ Paul DeMuro



# **Exhibit 1**



GENTNER DRUMMOND  
ATTORNEY GENERAL

November 15, 2024

Via Email

The Honorable J. Kevin Stitt  
Governor, State of Oklahoma  
Kevin.Stitt@gov.ok.gov

Governor Stitt,

I am pleased to confirm that it is now the appropriate time for a Contingency Review Board. After successful mediation to align all parties in support of the Consent Decree in the *Briggs et al. v. Friesen et al.*, this matter is ripe for approval by the Contingency Review Board.

Accordingly, I request a meeting of the Contingency Review Board to be scheduled after Speaker Hilbert and President Pro Tem Paxton are formally elected on January 7, 2025, and before the January 15, 2025, confirmation hearing before Judge Frizzell.

I am eager to present the Consent Decree to the Contingency Review Board to ensure justice for crime victims and their families while saving taxpayers untold millions in litigation exposure.

Respectfully,

A handwritten signature in blue ink, appearing to read "Gentner Drummond".

GENTNER DRUMMOND  
Attorney General

cc: The Honorable Kyle Hilbert  
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The Honorable Lonnie Paxton  
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