

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JESSICA GLENDENING, as next friend
of G.W.; AUDRA ASHER, as next friend
of L.P.; COLIN SHAW, as next friend of
C.B. and N.K.; and LAURA
VALACHOVIC, as next friend of E.K.,

Plaintiffs,

v.

Civil Action No. 5:22-cv-04032TC-GEB

LAURA HOWARD, Secretary of Kansas
Department of Aging and Disability
Services, in her official capacity,
MIKE DIXON, State Hospitals
Commissioner, in his official capacity, and
LESIA DIPMAN, Larned State Hospital
Superintendent, in her official capacity,

Defendants.

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Pursuant to Federal Rules of Civil Procedure 23(b)(1) and (2) and D. Kan. Rule 7.1, the above-named Plaintiffs ("Named Plaintiffs") respectfully move this Court for class certification.

Plaintiffs have satisfied the four requirements of Rule 23(a) because: (1) the proposed class of individuals charged with a crime and ordered to receive either a competency evaluation or restoration treatment is so numerous that joinder of all members individually is impractical; (2) the action presents common questions of law and fact regarding Defendants' systemic failure to provide timely competency evaluation and restoration treatment to the class and the constitutional harms inflicted thereby; (3) the claims of the Named Plaintiffs are typical of the claims of the class because the Named Plaintiffs have suffered the same harms and share the same interests as the class; and (4) the Named Plaintiffs will fairly and adequately represent the proposed class because

their Next Friends are dedicated to Named Plaintiffs' best interest, are familiar with the litigation, understand why relief is sought, and are willing to pursue the case. Finally, Class Counsel are well-qualified and prepared to vigorously prosecute this action on behalf of the class.

In addition, class certification under Rule 23(b)(2) is appropriate because Plaintiffs seek class-wide declaratory and injunctive relief, namely an order that Defendants provide timely competency and restoration services to the Class. The parties opposing the class—KDADS and its representatives—have refused to provide timely competency and restoration services to the Class on grounds generally applicable to all class members. Certification under Rule 23(b)(1)(A) is also appropriate because resolution on a class-wide basis will avoid the prospect of individual lawsuits imposing different standards on how Defendants must provide timely competency and restoration services to discrete members of the class.

For the reasons stated herein and as fully set forth in the Memorandum of Law in Support of Plaintiffs' Motion for Class Certification, Plaintiffs respectfully move the Court to:

1. Certify this action as a class action with the class defined as:

All individuals who: (1) are now, or will be in the future, charged with a crime in Kansas; and (2) are ordered to receive a mental competency evaluation or restoration treatment under K.S.A. § 22-3302 or K.S.A. § 22-3303.

2. Appoint the Named Plaintiffs as Class Representatives.
3. Appoint the ACLU of Kansas, the National Police Accountability Project, and Stinson LLP as Class Counsel.

DATED: November 17, 2023

Respectfully submitted,

**AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF
KANSAS**

s/ Sharon Brett

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**NATIONAL POLICE
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**Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I certify that on November 17, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notifications of such filing to the email addresses of all counsel of record.

s/ Sharon Brett
Sharon Brett
Attorney for Plaintiffs