



1 restoration sites, establishing consistent policies, procedures and practices across the  
2 competency sites and State Hospitals, assisting forensic evaluators and navigators in completing  
3 job duties as assigned, assisting with policy development at the agency and Hospital level  
4 including preparing and testifying on agency request legislation, oversight of the processing of  
5 court orders, and working with the key partners across the state in addressing any issues and  
6 concerns related to forensic patients.

7         3.         The Department provides competency focused inpatient services across multiple  
8 sites in Washington. At Western State Hospital (WSH), the Center for Forensic Services is the  
9 WSH unit that admits patients awaiting forensic evaluation, restoration and other forensically  
10 related matters. At Eastern State Hospital (ESH), a similar forensic population is provided  
11 services in the Forensic Services Unit. The Department also operates multiple residential  
12 treatment facilities, including the 24-bed Yakima Competency Restoration Program, the 30-bed  
13 Maple Lane Competency Restoration Program, and the Fort Steilacoom Competency  
14 Restoration Program which is a 30-bed facility that opened in August 2019. In addition, 25  
15 additional forensic beds became operational at ESH on June 1, 2020. Despite construction  
16 limitations due to COVID-19, these beds opened a month ahead of schedule. Another 25 beds  
17 opened at ESH on August 3, 2020. An additional 40 beds are completed at WSH and patients  
18 began the transfer process in February 2021. The WSH beds will be filled in a planned admission  
19 process that adheres to COVID protocols. All of these beds are part of the Department's  
20 obligation under the *Trueblood* contempt settlement agreement to increase forensic bed capacity  
21 statewide. All competency restoration referrals are screened to determine whether admission to  
22 the restoration treatment facilities is clinically appropriate. I am familiar with the process  
23 concerning admission to these facilities for competency evaluation and restoration treatment  
24 services.

25         4.         On February 17, 2021, Michael Moyer was ordered to receive competency  
26 restoration services. The Department obtained a copy of the order the next day. Due to a variety

1 of factors (e.g, impact of COVID-19), the Department is unable to provide an exact admission  
2 date. Michael Moyer was considered for referral to a restoration treatment facility. The referral  
3 was accepted for treatment at Fort Steilacoom Restoration Program and placed on the facility  
4 admissions waitlist with an estimated admission date of March 29, 2021.

5 Due to the COVID-19 pandemic, and in an effort to protect both patients and staff in  
6 accord with guidance from federal, state, and local health departments and the Department's  
7 incident command center, numerous safety measures for staff and patients have been  
8 implemented since March 2020. For example, in order to accommodate social/physical  
9 distancing and, at some facilities, create space for a necessary and required quarantine room (if  
10 a patient tests positive), wards at the hospitals and the residential treatment facilities are  
11 operating at a reduced capacity. Furthermore, if a current facility or hospital ward has a positive  
12 test (for patient or staff), admissions/transfer to and from that unit are paused until all staff and  
13 patients are tested and contact tracing can be completed. As patients are admitted, they will be  
14 subject to a 14-day stay on a quarantine ward to ensure they are symptom-free prior to being  
15 transferred to other wards.

16 As of March 25, 2021, WSH has had 116 confirmed cases (0 active, 3 deaths) of COVID-  
17 19 in patients and 213 confirmed cases (1 active) in staff members. Fort Steilacoom Restoration  
18 Program has had no COVID-19 cases among patients but 3 confirmed cases (0 active) in staff  
19 members. In addition, approximately 15 percent of staff across all disciplines (including those  
20 needed to process new admissions such as doctors, nurses, and social workers) are on leave due  
21 to meeting high risk criteria. This is in addition to staff who are on leave due to illness. With  
22 required 14-day quarantine and reduced workforce at WSH, admissions to WSH are at a  
23 somewhat slower pace compared to pre-COVID-19 levels. Temporary slow-downs may occur  
24 if patients or staff test positive at the Center for Forensic Services. With the on-going pandemic,  
25 safety measures at the hospitals and residential treatment facilities are subject to change at any  
26 time as additional information is received.

1           5.       When a criminal charge is dismissed and an individual is committed to WSH for  
2 potential civil commitment (commonly known as a “felony conversion” or “felony flip”), that  
3 individual will occupy a bed that could potentially be used for a defendant undergoing  
4 competency restoration who is not clinically appropriate for admission to a Restoration  
5 Treatment Facility (Yakima, Maple Lane, and Fort Steilacoom Competency Restoration  
6 Programs). In addition, COVID-related ward holds impact the ability of individuals to transfer  
7 out of those beds after their felony conversion hearings, thus causing additional delays for those  
8 awaiting restoration beds.

9           6.       As a result of the COVID-19 pandemic, the OFMHS Jail Technical  
10 Assistance staff and members of the information technology department communicated with  
11 jails on both the east and west side of the state to verify present capabilities and barriers to  
12 establishing video teleconferencing for competency evaluations. Some of the challenges include  
13 internet connectivity within a private secure space for an evaluation, equipment that meets safety  
14 needs, and staffing. As of a result of this work, televideo evaluations are being done at the  
15 SCORE, Kent, Issaquah, Puyallup, Yakima City, and Aberdeen jails, the Colville Tribes  
16 Corrections Detention Facility, and County jails in Thurston, Klickitat, King, Kitsap, Island,  
17 Whatcom, Skamania, Snohomish, Ferry, Benton, Franklin, Grant, Okanogan, Whitman,  
18 Spokane, Walla Walla, and Stevens. The Department continues to reach out and offer assistance  
19 to counties.

20           7.       To the extent that forensic services are delayed, the delay is due to factors outside  
21 of the Department’s control, including dramatic increases in overall referrals for competency  
22 restoration services. Over the past eight fiscal years, there has been a 60 percent increase for  
23 inpatient evaluations and competency restoration services. The only reason this number was not  
24 higher for the end of SFY 2020 was due to the COVID-19 pandemic (and the reason why there  
25 was a 15% drop for SFY 19 to SFY 20). Further, there was a 25 percent increase in inpatient  
26 referrals in the course of a single fiscal year to the Department, from 2015 to 2016, and another

1 33 percent increase from fiscal year 2016 to 2017. The table below provides number of referrals  
2 statewide and the annual percentage change from fiscal year 2013 through fiscal year 2020.

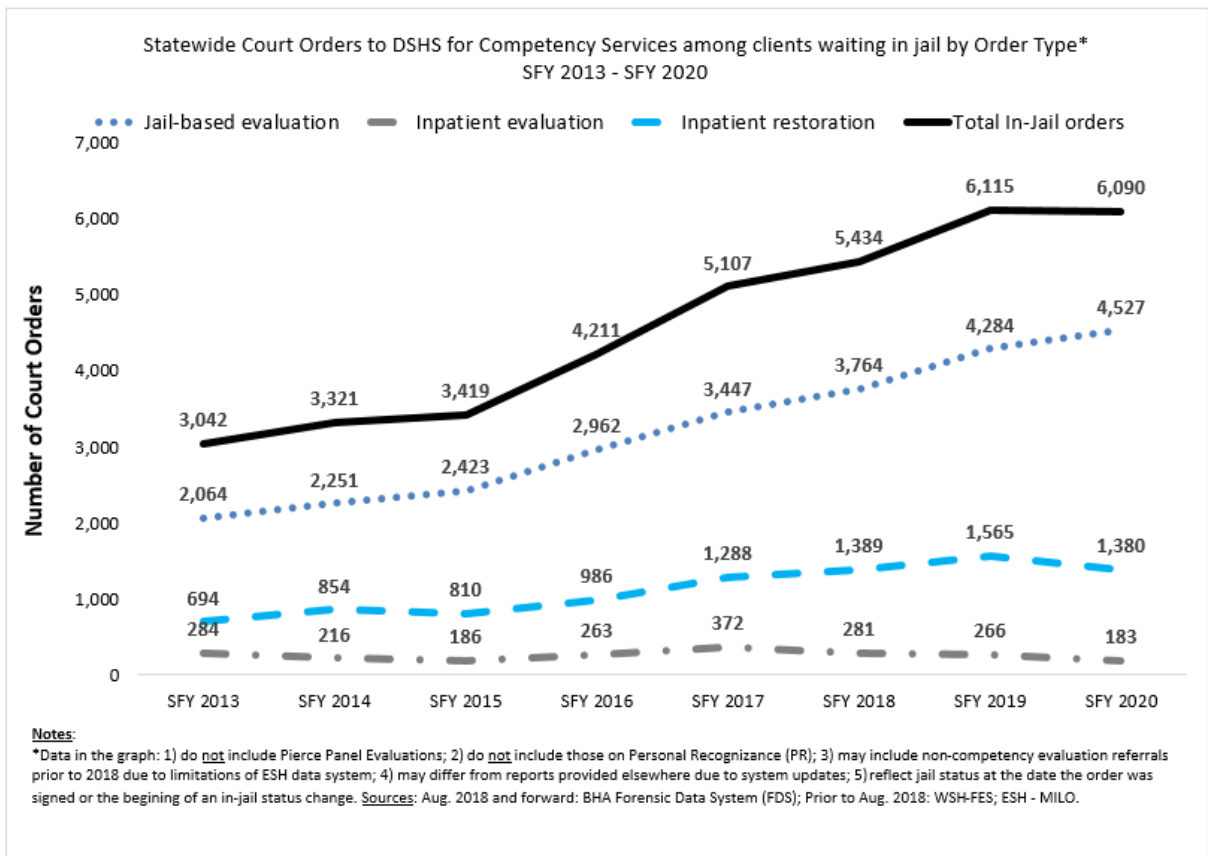
3  
4 **State Fiscal Year Percent Change in Number of Court Orders where client  
5 is waiting in jail for Inpatient Evaluation and Competency Restoration  
6 Services**

7 State Fiscal Year	Number of in-jail orders	Percent Change
8 SFY 2013	978	N/A
9 SFY 2014	1,070	9%
10 SFY 2015	996	-7%
11 SFY 2016	1,249	25%
12 SFY 2017	1,660	33%
13 SFY 2018	1,670	1%
14 SFY 2019	1,831	10%
15 SFY 2020	1,563	-15%

16 Data Notes:

- 17 1) Counts do not include individuals waiting in the community (released from jail on Personal  
18 Recognizance)  
19 2) Counts prior to 2018 may include some non-competency evaluation referrals due to previous limitations  
20 of the ESH data system.  
21 3) The table reflects jail status at the date the order was signed or the beginning of an in-jail status change.

8. The chart below demonstrates the dramatic increase in referrals the Department has experienced at the same time it has been adding new capacity (both evaluator and bed capacity). This increase in referrals exceeds any historical peak, and greatly exceeds the previously calculated 5-8 percent expected annual rise in referrals prior to 2012. The plateau effect from SFY 19 to SFY 20 was caused by the reduction in referrals due to the COVID-19 pandemic.



9. The Department takes numerous steps to reduce forensic wait times. The Department opened and operates alternative competency restoration facilities in residential treatment settings, including facilities in Yakima, Pierce, and Thurston counties. All of these facilities provide restoration treatment, with a total capacity of 84 beds. The Department also opened additional forensic beds at both state hospitals, created additional bed capacity by

1 transferring NGRI patients to Eastern State Hospital, and, as a result of a legislative mandate,  
2 converted a civil unit at WSH to a forensic unit in July 2018. These actions created 164 new  
3 beds for forensic services, in addition to the approximately 141 beds that were available for pre-  
4 trial forensic services prior to expansion. This is a 116 percent increase in beds since 2015.

5 10. Beginning in July of 2016, the Department again increased the number of  
6 evaluators, support staff, and managers responsible for providing competency services.  
7 Specifically, the Department hired eight additional evaluators, two additional support staff, and  
8 three supervisors. The Department was given permission to hire three additional forensic  
9 evaluators at the end of 2017 and these positions were filled in early 2018. These staff additions  
10 are above and beyond staff added at the beginning of the 2015-2017 biennium. A request for  
11 additional evaluators was made in the 2019-2021 biennium to address competency evaluations.  
12 Thirteen positions were funded effective July 1, 2019 and five additional evaluator positions  
13 were funded effective July 1, 2020. These 18 positions were all filled by the end of the calendar  
14 year in 2020. Furthermore, the Department emphasizes completing inpatient evaluations as  
15 quickly as possible using an early referral system based on competency restoration best  
16 practices at all restoration facilities and State hospitals.

17 11. The Department has also instituted a number of reforms aimed at the NGRI  
18 population. In the state hospital setting, the NGRI population competes with other forensic  
19 populations for bed space, including competing with defendants to be admitted for trial  
20 competency evaluation or restoration. Among many other reforms, the Department has  
21 implemented new policies, trained the state hospitals on these policies, and increased the quality  
22 and consistency of treatment documentation and release planning. The Department also  
23 increased NGRI patients' access to grounds privileges to help in their recovery. One of the  
24 central goals of these efforts is to reaffirm that treatment for NGRI patients will be recovery-  
25 oriented and transparent, with the mission of assisting patients with their recovery and  
26 reclaiming their lives, in the least restrictive setting clinically indicated and consistent with

1 public safety. The Department has also helped facilitate the release of patients who had been  
2 deemed clinically ready for release. All of these efforts will help to ensure that patients in the  
3 NGRI population who can be served in a setting other than the state hospitals have a realistic  
4 opportunity to progress to that discharge, thus creating beds in which patients can receive  
5 competency services. Based on 2019 data, these reforms have resulted in increasing the number  
6 of NGRI patients receiving final discharges from Department authority by 59 percent, as  
7 measured by comparing the number of final discharges granted during the 32 months prior to  
8 and subsequent to the Department’s commitment making these reforms.

9       12. Admission dates are not static, and can fluctuate depending on a variety of  
10 circumstances, including the changes in the bed allocation for a given week, the amount and  
11 types of orders on the waitlist (i.e. 90-day order versus 45-day order), the “turnover” rate (if  
12 individuals are discharged from the facility during a given time), the receipt of triage referrals,  
13 and COVID-related ward holds (which temporarily halt transfers to and from wards at the state  
14 hospitals). The Department developed an admissions algorithm to assist with admission  
15 decisions. The admissions algorithm—developed in effort to create a good faith, equitable  
16 solution to honor all incoming orders and meet the rising demand for competency services—  
17 takes into account legal status and various other modifiers. The modifiers include factors such  
18 as whether a defendant is waiting in jail for admission (versus a defendant who is on personal  
19 recognizance in the community), or a defendant who was been prioritized for admission after a  
20 triage referral. This algorithm is embedded in the Forensic Data System, which was  
21 implemented on August 1, 2018. Then, using the data created by the algorithm, admissions staff  
22 apply a bed allocation model. The bed allocation model is reviewed and revised weekly by the  
23 DSHS Chief Medical Officer to maximize bed turnover and utilization in order to serve as many  
24 defendants as possible using the beds available, and to ensure that each defendant is considered  
25 for all treatment settings that may be appropriate.



1           13.     The Department has also taken steps, in collaboration with its community  
2 partners, to reduce the stresses on the forensic mental health system. The Department has  
3 worked with the Legislature since 2013 to obtain additional funding for additional mental health  
4 crisis response and crisis diversion services, including evaluation and treatment facilities, crisis  
5 stabilization and crisis triage facilities and mobile crisis response teams. For example, in 2018,  
6 the following facilities opened: 8-bed stabilization facility in Walla Walla, 16 crisis triage beds  
7 in the Salish region, and 16 stabilization beds in North Central region.

8           14.     The Department has organized on-going meetings with key partners, including  
9 prosecutors, defenders, jail/corrections, and the judiciary, in various counties, including the  
10 counties that refer the most forensic cases: King, Pierce, Snohomish, Thurston, Clark, and  
11 Spokane. These meetings are intended to address the systemic difficulties inherent with the  
12 surge in demand for competency services within these top referring counties, and to evaluate  
13 and discuss additional options to decrease the amount of referrals.

14           15.     Pursuant to a legislative appropriation, the State initially funded four diversion  
15 programs in July 2016 to begin services (Pacific, King, Spokane, and Greater Columbia). In  
16 July of 2019, the Department awarded funds to three counties/regions (King, Spokane, and  
17 Greater Columbia) for the purpose of continuing their prosecutorial diversion programs. While  
18 these programs collaborate with diversion programs overseen by the office of the Court  
19 Monitor, they are separate programs and are state funded. The Department's contracted  
20 prosecutorial diversion programs are intended to divert individuals with behavioral health  
21 conditions from the criminal justice system and competency services, into outpatient behavioral  
22 health services. Using different approaches, the programs aim to reduce entry/re-entry into the  
23 criminal justice and competency systems by improving access to community-based behavioral  
24 health and other social services.

1           16.     The Department collaborates with the Court Monitor and 12 additional diversion  
2 programs that focus on providing crisis services, co-responder programs, enhanced screening  
3 for services pre- and post-booking, and improving warm hand-off re-entry services.

4           17.     During the 2019 Legislative session, the Department worked with the  
5 Governor’s Office and other stakeholders to achieve the passage of changes to RCW Ch. 10.77.  
6 These changes are intended to reduce the number of people requiring forensic competency  
7 services, and also support the programs to be implemented as part of the *Trueblood* contempt  
8 settlement, described below. For example, the changes create a presumption that serious  
9 misdemeanors will not be ordered for competency restoration unless the prosecution meets the  
10 burden of showing there is a compelling state interest. The Legislature also appropriated funds  
11 to support misdemeanor diversion. The passage of the bill that made these changes, SB 5444,  
12 represents a significant accomplishment made possible only through major effort on the part of  
13 the Department and its partners.

14           18.     On October 25, 2018, the parties in the *Trueblood v. DSHS* litigation filed a joint  
15 amended settlement agreement for contempt with the Federal District Court, which was  
16 approved by the Federal District Court on December 11, 2018. The agreement proposed by the  
17 *Trueblood* parties contemplates a multi-year, multi-phase plan to address the ongoing needs of  
18 class members waiting in jail for competency services. These services include (1) additional  
19 forensic evaluators, (2) the creation of an outpatient competency restoration program, (3) he  
20 creation of a new role in the forensic system—Forensic Navigators, (4) additional crisis  
21 intervention training, (5) expansion of residential support opportunities, and (6) other diversion  
22 strategies to decrease the number of class member who require forensic services from the  
23 Department. As required in SB 5444, the Department will certify when capacity becomes  
24 available for the Forensic Navigator program and the outpatient competency restoration. The  
25 Forensic Navigator programs was operational on July 1, 2020 and so were two out of the three  
26 outpatient competency restoration programs. The third outpatient competency restoration

1 program began services in September 2020. The fairness hearing for the class was set for  
2 December 11, 2018 and the Court approved the settlement agreement the same day. The  
3 settlement agreement resolves the ongoing contempt proceedings before the Federal Court, and  
4 the Court has suspended the entry of judgments for contempt fines related to inpatient services  
5 contingent on a determination of substantial compliance with the terms of the agreement. The  
6 Department will continue to calculate and report on contempt sanctions on a monthly basis and  
7 if the Department is found to be in material breach, all accumulated fines may be reduced to  
8 judgment at that time. Contempt sanctions regarding in-jail evaluations will continue even  
9 under the agreement. The Federal Court continues to exercise jurisdiction over the *Trueblood*  
10 case, and is monitoring the Department's efforts with assistance from the Trueblood Court  
11 Monitor.

12 The full agreement can be found online at:

13 <https://www.dshs.wa.gov/sites/default/files/BHSIA/FMHS/Trueblood/2018Trueblood/5>  
14 [99\\_1\\_AmendedAgreement.pdf](#)

15 The Department's Monthly Reports to the Court-Appointed Monitor in the *Trueblood*  
16 *v. Department of Social and Health Services* case and their appendices may be found at:

17 <https://www.dshs.wa.gov/bha/court-monitor-reports>

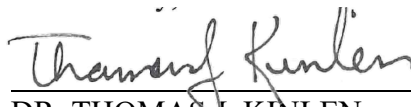
18 19. The State has also provided a significant budget investment in order to  
19 implement the settlement and reduce wait times. Budget appropriations for the 19-21 fiscal  
20 biennium include: (1) \$5 million to hire additional forensic evaluators; (2) \$1.89 million to  
21 establish outpatient competency programs; (3) \$10.23 million to expand crisis triage and  
22 stabilization services to divert class members; (4) \$11 million for supports to individuals with  
23 behavioral health issues arrested for misdemeanor crimes; (5) \$4.7 million to create teams that  
24 will locate, engage and connect individuals identified as high utilizers of the forensic  
25 competency system with services and resources; (6) \$6.4 million for housing supports to  
26 support outpatient restoration and diversion efforts; (7) \$2.2 million to create Forensic

1 Navigators to support diversion and outpatient restoration; (8) \$27 million for additional  
2 forensic bed capacity; (9) \$633,000 to provide technical assistance to jails; (10) \$899,000 to  
3 provide crisis intervention training to corrections officers, 911 dispatchers, and more police  
4 officers; (11) \$4 million to expand co-responder programs; (12) \$653,000 for workforce  
5 development activities; (13) \$2.5 million for additional staffing at state agencies to support  
6 these efforts; and (14) \$400,000 for creation of a program to certify peer counselors on the  
7 criminal justice system. In addition to these funds that are linked to the forensic population, the  
8 State also made significant funding investments in the wider mental health system.

9           20.     The foregoing demonstrates the Department's good faith efforts to admit all  
10 defendants awaiting competency services at the earliest date possible, and the Department will  
11 continue to make such efforts going forward.

12           I declare under penalty of perjury under the laws of the State of Washington that the  
13 foregoing is true and correct to the best of my knowledge.

14           Executed this 25<sup>th</sup> day of March 2021, at Olympia, Washington.

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18 DR. THOMAS J. KINLEN  
19 Director, Office of Forensic Mental Health Services  
20 Behavioral Health Administration  
21 Department of Social and Health Services  
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