

Competency to Stand Trial, Phase I: Staff Productivity Standards, Data Reliability, and Other Parties' Actions May Impact DSHS's Ability to Meet Timelines

Briefing Report

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December 5, 2012

JLARC

2012 Legislation (SSB 6492) Provided Guidance to DSHS and JLARC

Increase in referrals raised concerns about amount
of time defendants wait for evaluation

DSHS

- Legislation established performance targets for DSHS. Targets established how long it has to complete competency evaluations.

JLARC

- Directed JLARC to complete two performance assessments of the agency's approach and success in meeting targets.
 - ♦ Second study will be completed December 2013.

Presentation Overview

Background

- What is a competency evaluation?
- What do we know about referrals for competency evaluations?

New requirements for completing evaluations and DSHS's plan to address them.

Three issues of concern in early implementation.

- Assumed staffing and productivity standards not likely met.
- Data reliability issues.
- Evaluations involve more parties than just state hospitals.

Background: What Is a Competency Evaluation?



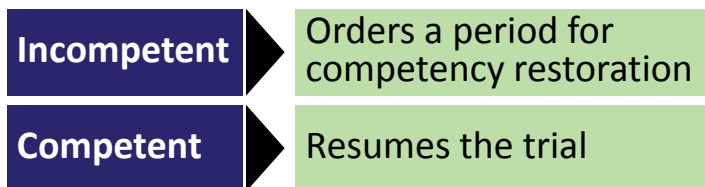
Evaluations Intended to Prevent Prosecution of Mentally Incompetent Defendants

- Criminal defendant is not competent to stand trial if:
 - ♦ Lack capacity to understand the proceedings against them; or
 - ♦ Cannot assist in their defense.
- State statute requires that *“no incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues.”*

A Trial Is Suspended if Defendant's Competency Is Questioned

- Defense, prosecutor, or judge can refer a defendant for a competency evaluation.
- Psychologists from DSHS's Eastern State Hospital or Western State Hospital usually conduct these evaluations.

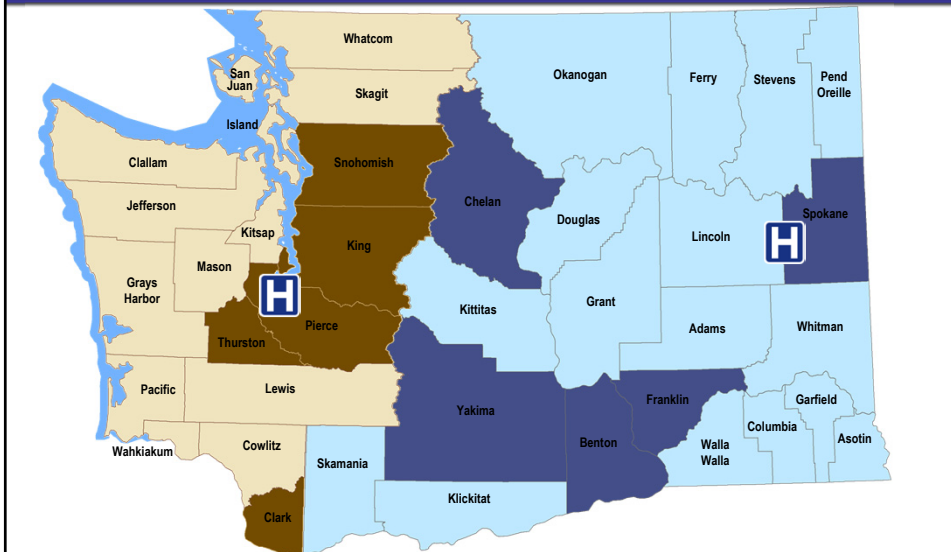
Based on results, court determines if defendant is:



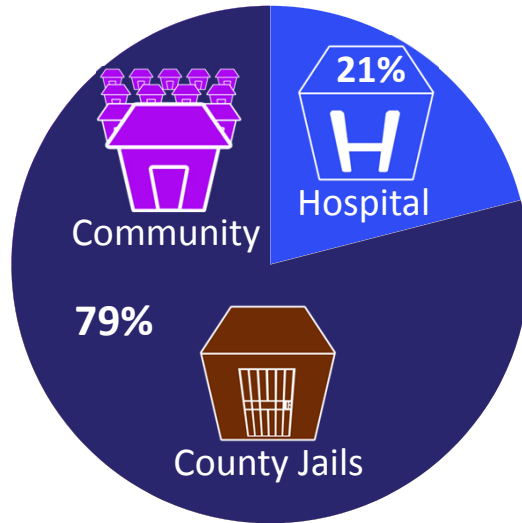
Background: What Do We Know About Referrals?



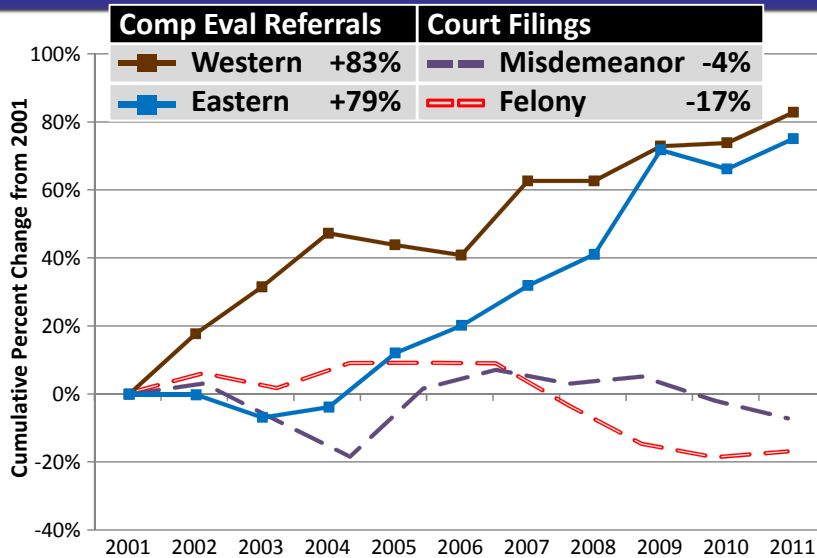
In 2011, 3,035 Defendants Were Referred for Competency to Stand Trial Evaluations



79% of Competency Evaluations Referred to Non-Hospital Setting in 2011



Competency Evaluation Referrals in WA Outpaced Other Key Trends



Competency Evaluation Referrals Have Increased in Other States as Well

DSHS Reports: Increase is a national trend

- Does not appear to be driven by policy decision unique to Washington.

National Research: Not available

- Definitive research on cause of increased referrals is not available.

JLARC Plan: Review other states' experiences

- Review other states' experiences with competency evaluations as part of the second phase of the study.

New Requirements for Completing Evaluations and DSHS's Plans to Address Them



SSB 6492 Established New Timelines and Management Requirements for DSHS

- Intended to “*substantially improve the timeliness of services related to competency to stand trial*”

Setting	Days to Admit Defendant or to Complete Evaluation
Jail	Complete within 7 days
Community	Complete within 21 days
Hospital	Admit within 7 days

- DSHS must publicly report performance annually, and in any quarter it does not meet targets.

DSHS Reports That It Has Plans in Place to Address the New Requirements in Statute

- Given recent passage of new target requirements, performance information not available.
- JLARC reviewed DSHS’s plans and early implementation activities intended to meet new requirements and challenges identified by JLARC, such as:
 - ♦ Data management and analysis
 - ♦ Recruitment and retention
 - ♦ Quality and productivity standards for evaluators
 - ♦ Monitoring defendants’ length of stay

Three Issues of Concern in Early Implementation:

- (1) Assumed staffing and productivity standards not likely met
- (2) Data reliability issues
- (3) Evaluations involve more parties than just state hospitals

Issue 1: Meeting the Targets Depends on Three Assumptions in Fiscal Note

Assumption	Challenge for DSHS	Reported Plan
Staffing: <i>Appropriate levels at hospitals</i>	<ul style="list-style-type: none"> • Hospitals report challenges recruiting and retaining evaluators • Over half are retirement eligible in next 10 years. 	<ul style="list-style-type: none"> • Staffing plan • New approaches to completing evaluations
Productivity: <i>Consistent number of evaluations completed monthly</i>	<i>Based on three months of data reported by hospitals, evaluators:</i> <ul style="list-style-type: none"> • at Western completed 75% of expected evaluations; • Eastern completed 80% 	<ul style="list-style-type: none"> • Track evaluator productivity • Required to reassess resources needed to meet targets
Referrals: <i>Similar number and type</i>	<i>DSHS has no control over this aspect</i>	

Issue 2: JLARC's Request for Data Revealed Data Reliability Issues

Current Data

- Contained several anomalies and outliers DSHS could not explain.
- Lack of information for data entry controls and quality.

Going Forward

- If these issues are not addressed, it will impact:
 - ♦ DSHS's ability to report on its progress, as required by statute; and
 - ♦ JLARC's ability to complete its second study.
- DSHS reports it has a plan to improve data quality and better utilize data for decision making.

Issue 3: Evaluations Involve Other Parties, Whose Actions Can Delay Evaluations

Steps in the Process		Who is responsible?	
1	Defendant's competency questioned. Trial suspended.	Attorney	Judge
	Defendant sent to jail or released to community.	Court	
2	Four documents sent to hospitals	Court	Jail
<i>Evaluation Period Begins for DSHS</i>			
3	Evaluator assigned, evaluation scheduled	Hospital	
4	Materials reviewed; Defendant interviewed and tested; Report with opinion written	Hospital	
5	Report distributed to Court	Hospital	
<i>Evaluation Period Ends for DSHS</i>			
6	Competency hearing scheduled	Court	
7	Defendant's competency determined	Judge	

Parties Other than DSHS May Delay the Evaluation Process

- Cooperation of state hospitals, county courts and jails, attorneys, and the defendants is needed for timely completion of evaluation process.
- Four delays in statute and others identified by DSHS that are outside its control.
- Examples of these delays:
 - ♦ Courts may not provide required documents to hospital in timely manner, delaying the evaluation
 - ♦ Defendant may change his mind about attorney presence during evaluation
 - ♦ Unusual spike in evaluation referrals

Legislature Should Be Aware of Three Issues of Concern and Next Steps

- Three issues of concern in early implementation
 - ♦ Assumed staffing and productivity standards were not likely met
 - ♦ Data reliability issues
 - ♦ Evaluations involve more parties than just state hospitals whose actions can delay competency evaluations
- These issues and DSHS's implementation plan will inform the second study due in December 2013
 - ♦ Early 2013, we will present a Scope and Objectives

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