

Timely Competency Services: Washington State's Journey to Meet the Constitutional Mandate of *Trueblood v. DSHS*

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Trueblood Case History

- ▶ Historical and recurrent problems with delays in competency services over more than a decade
- ▶ Suit was first filed by a public defender and her client in August of 2014
- ▶ Advocacy groups later join suit and amend complaint to include a class action
- ▶ Plaintiffs sought several preliminary injunctions
- ▶ Summary judgment in December of 2014, but case not fully decided
- ▶ Trial in March of 2015

Trueblood Class Definition and Timeline

- ▶ The class definition treated competency evaluations and restorations the same:

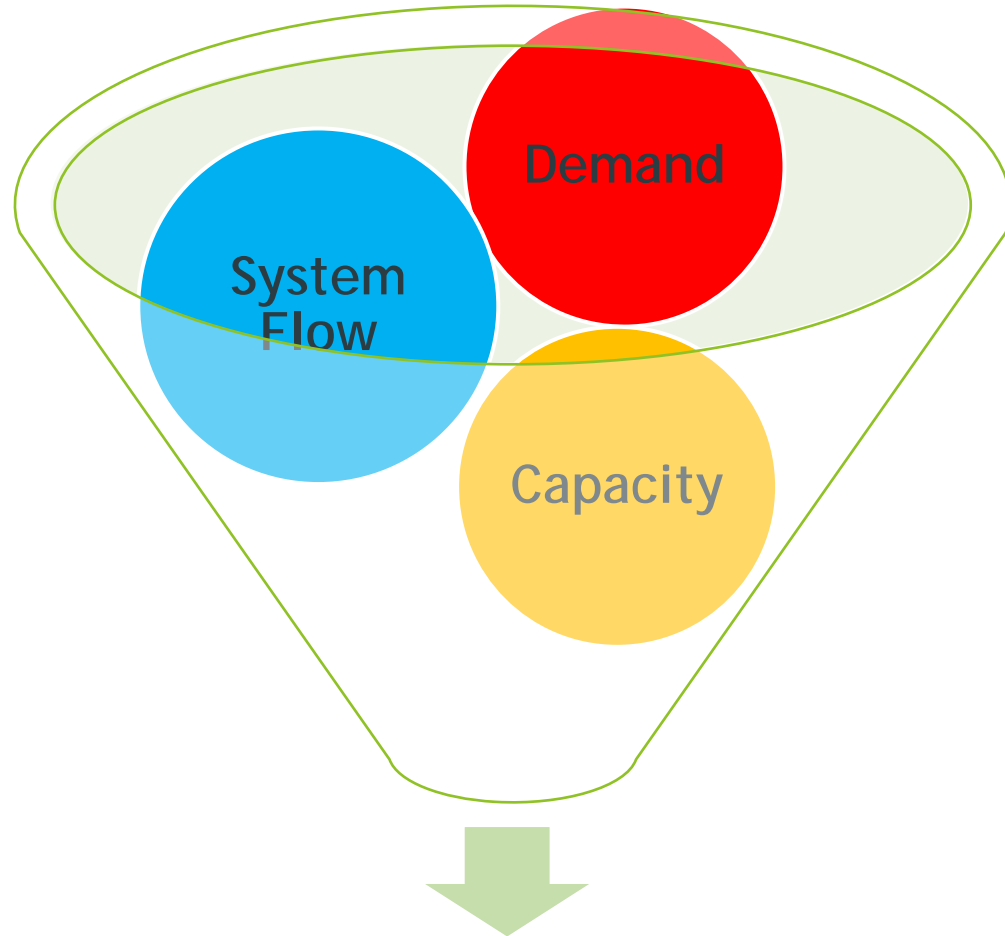
All persons who are now, or will be in the future, charged with a crime in the State of Washington and: (a) who are ordered by a court to receive competency evaluation or restoration services through DSHS; (b) who are waiting in jail for those services; and (c) for whom DSHS receives the court order.

- ▶ The court's order: U.S. Constitution requires WA to complete evaluations and admissions within 7 days. The seven days began when the criminal court signs the order, regardless of when it was transmitted.

Requirements of April 2015 Order:

- ▶ Achieve 7 day standard within 9 months
- ▶ Long-term plan to sustain compliance
- ▶ Oversight
 - Court appointed Monitor
 - Monthly reports to the Monitor
 - Quarterly Monitor reports to the Court
 - Court hearings as needed

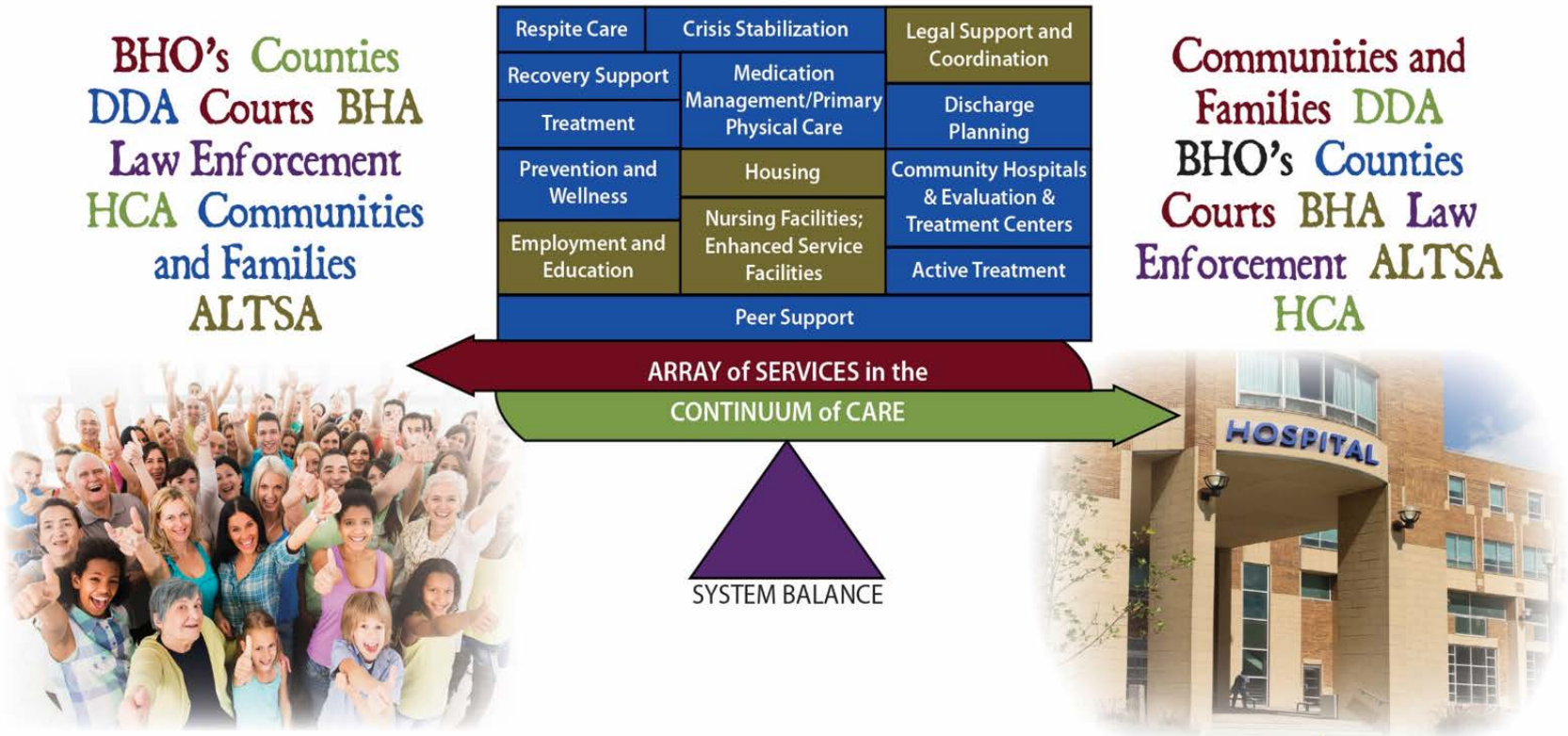
Levers that Drive Timely Services



Timely Competency Services

System Partners Influence Outcomes

Behavioral Health System **Continuum of Care**



Resources Needed to Succeed

\$40.5 Million Dollar Investment

Capacity

- 40% more Forensic Evaluators (13)
- 65% more Beds (90)

Demand

- \$4.8 million for Non-Felony Diversion Services

System Flow

- 11 Staff for new Office of Forensic Mental Health Services
- Statutory requirements for system partners⁷

7 months left...so many tasks to complete!

- ▶ 72 beds in two state hospitals
- ▶ 30 beds in new Residential Treatment Facility
- ▶ Establish Office of Forensic Mental Health Services
- ▶ Establish data collection and reporting structure
- ▶ Facilitate cross-system collaboration and improvements
- ▶ Achieve substantial compliance with the 7-day standard
- ▶ And so on...



Appeal of the Court's Order

- ▶ Appeal challenged only one portion of the class: competency evaluations
- ▶ DSHS did not seek a stay of the court's order during appeal
- ▶ Even on a relatively quick timeline, a decision from the court of appeals took more than a year
- ▶ Although the district court's decision was reversed, the case was sent back to the district court to reconsider the issue
- ▶ Revised order: evaluations to be completed within 14 days, still calculated from signing of order

Life happens...now what?

- CMS
- Workforce

New Challenges

TRO's

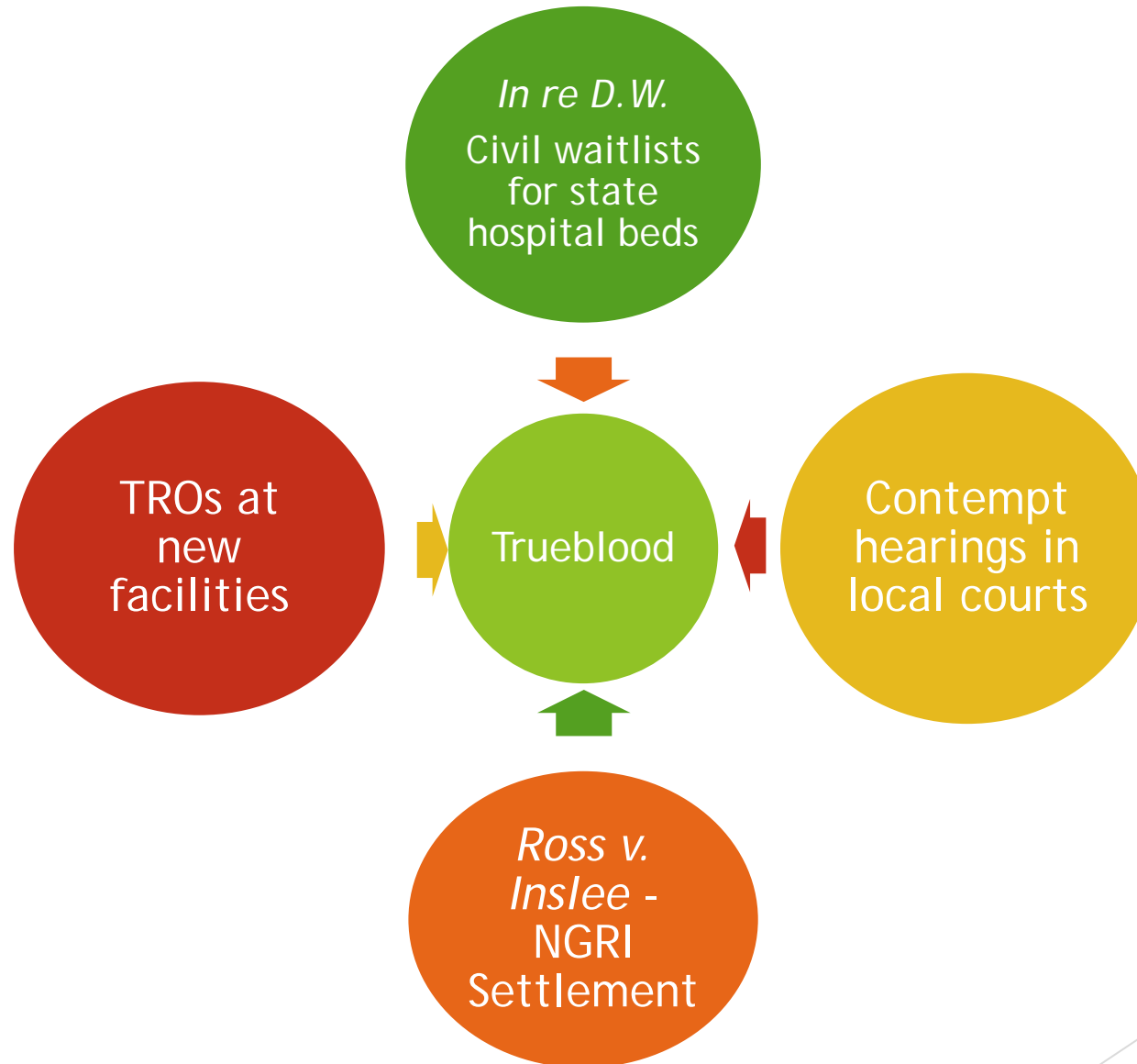
- Compensation Adjustments
- Expand RTFs

- Alterations to RTFs

Continue to Adjust



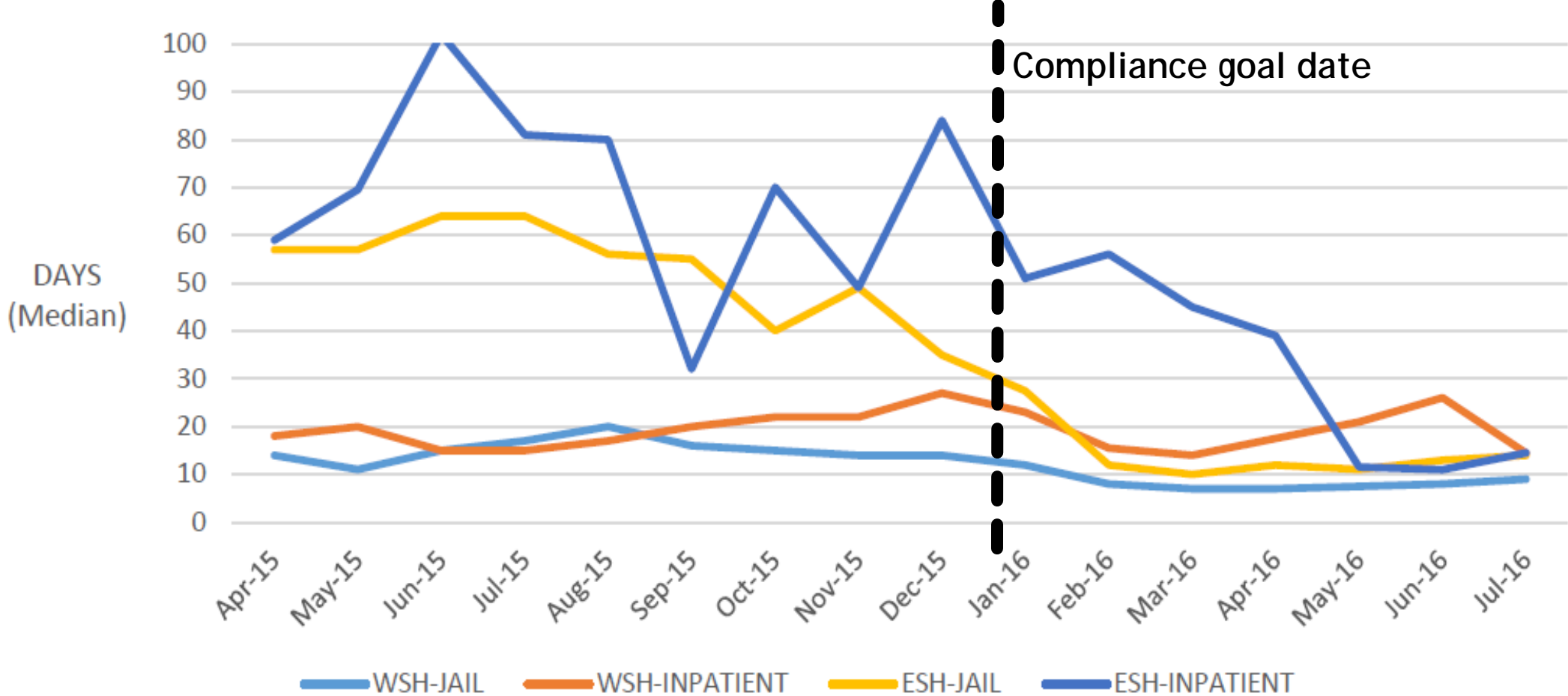
Competing Legal Pressures



Progress check...How'd we do?

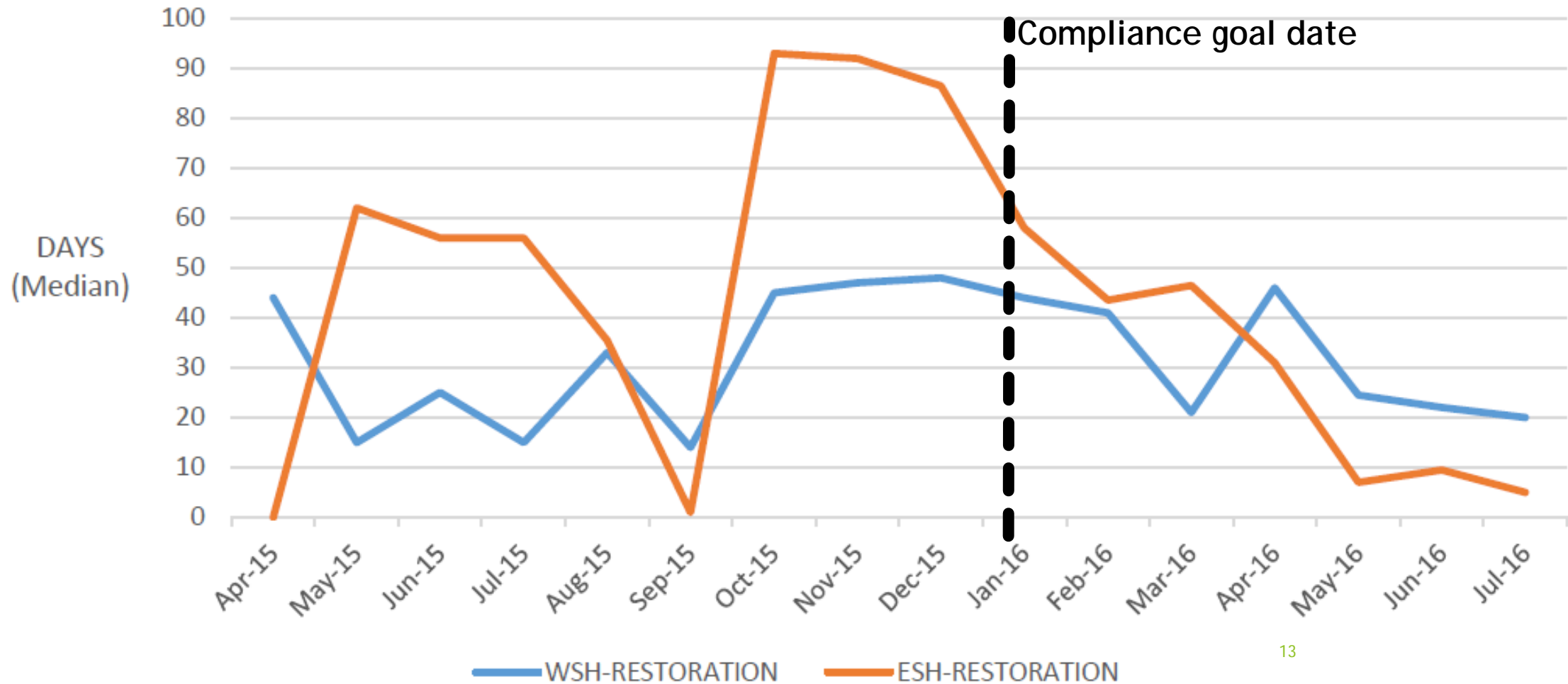
Evaluations - Median

Median days: order signed to referral completed (days in jail)



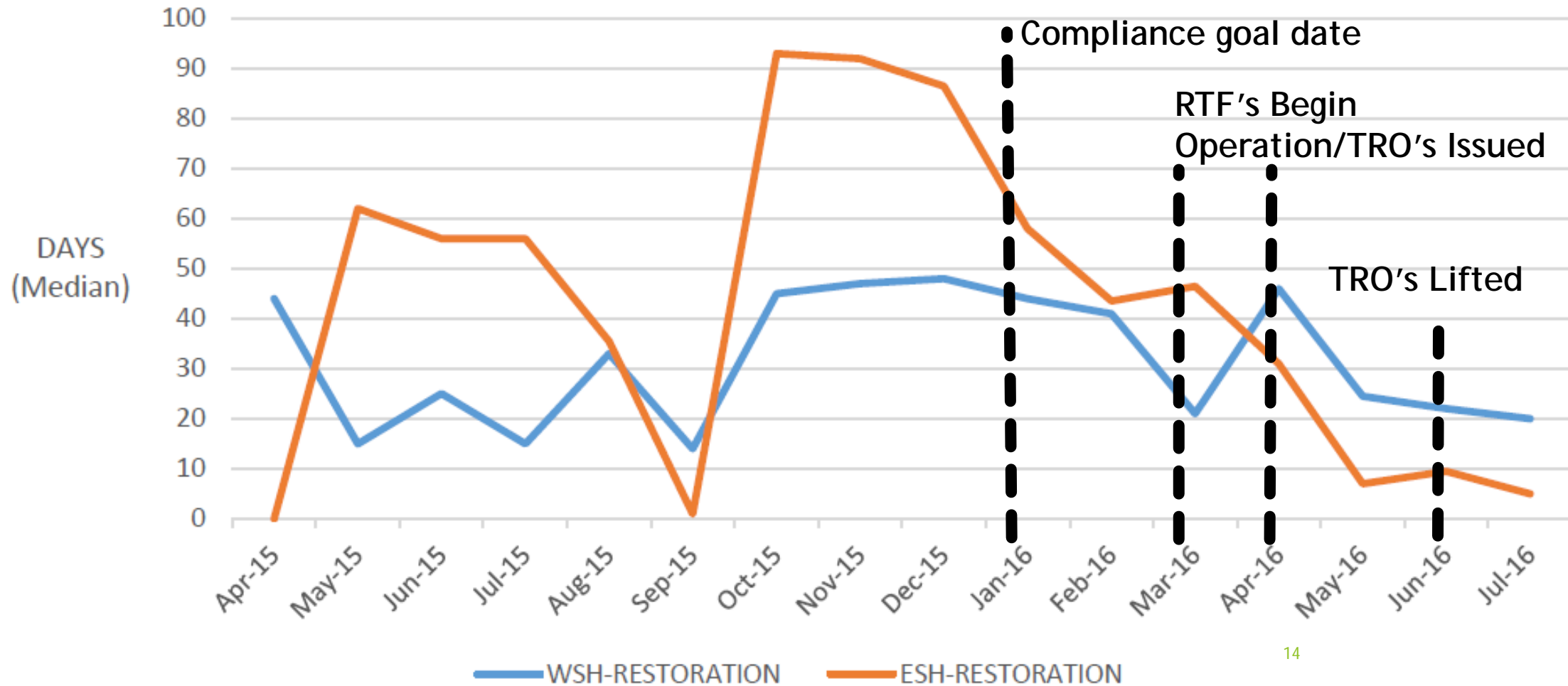
Progress check: How'd we do?

Restorations - Median
Median days: order signed to referral completed



Progress check: How'd we do?

Restorations - Median
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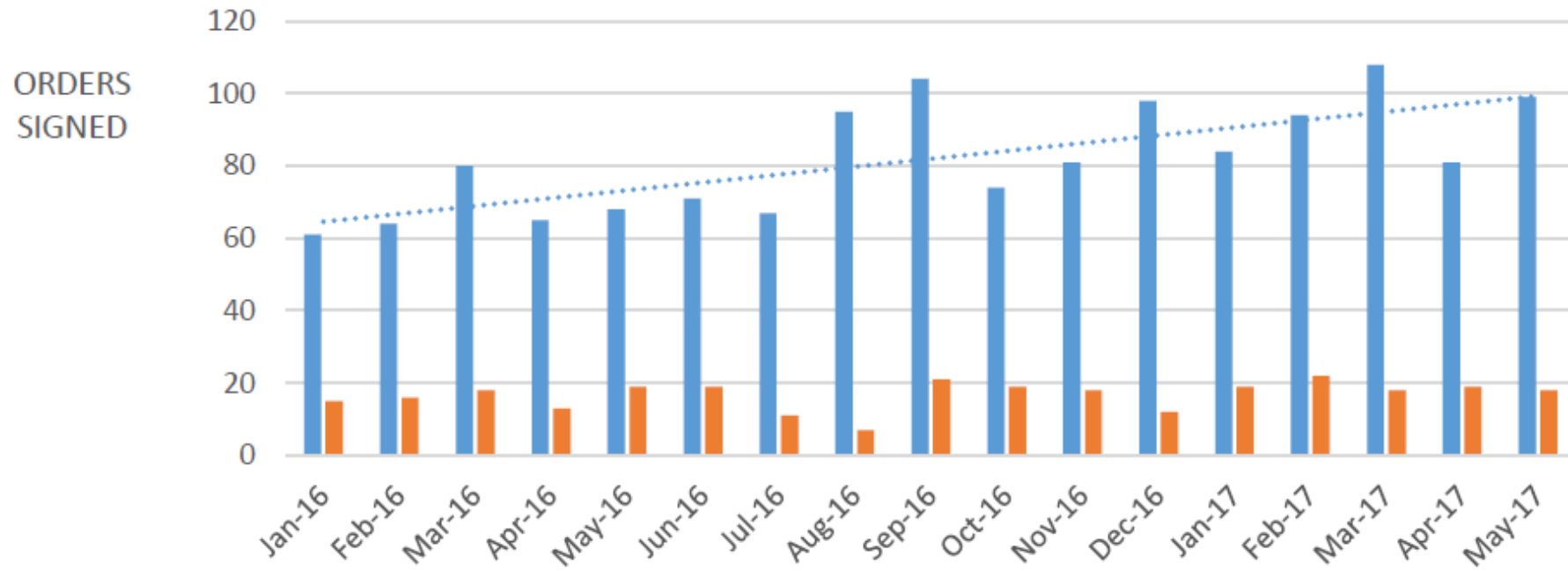


Interim Legal Developments

- ▶ Extension requested in December of 2015
- ▶ Court grants request to extend compliance deadline to end of May, 2016
- ▶ In granting extension, the court included numerous specific requirements
- ▶ Court begins to hold regular hearings to address compliance and progress
- ▶ Increased involvement of the court and court monitor

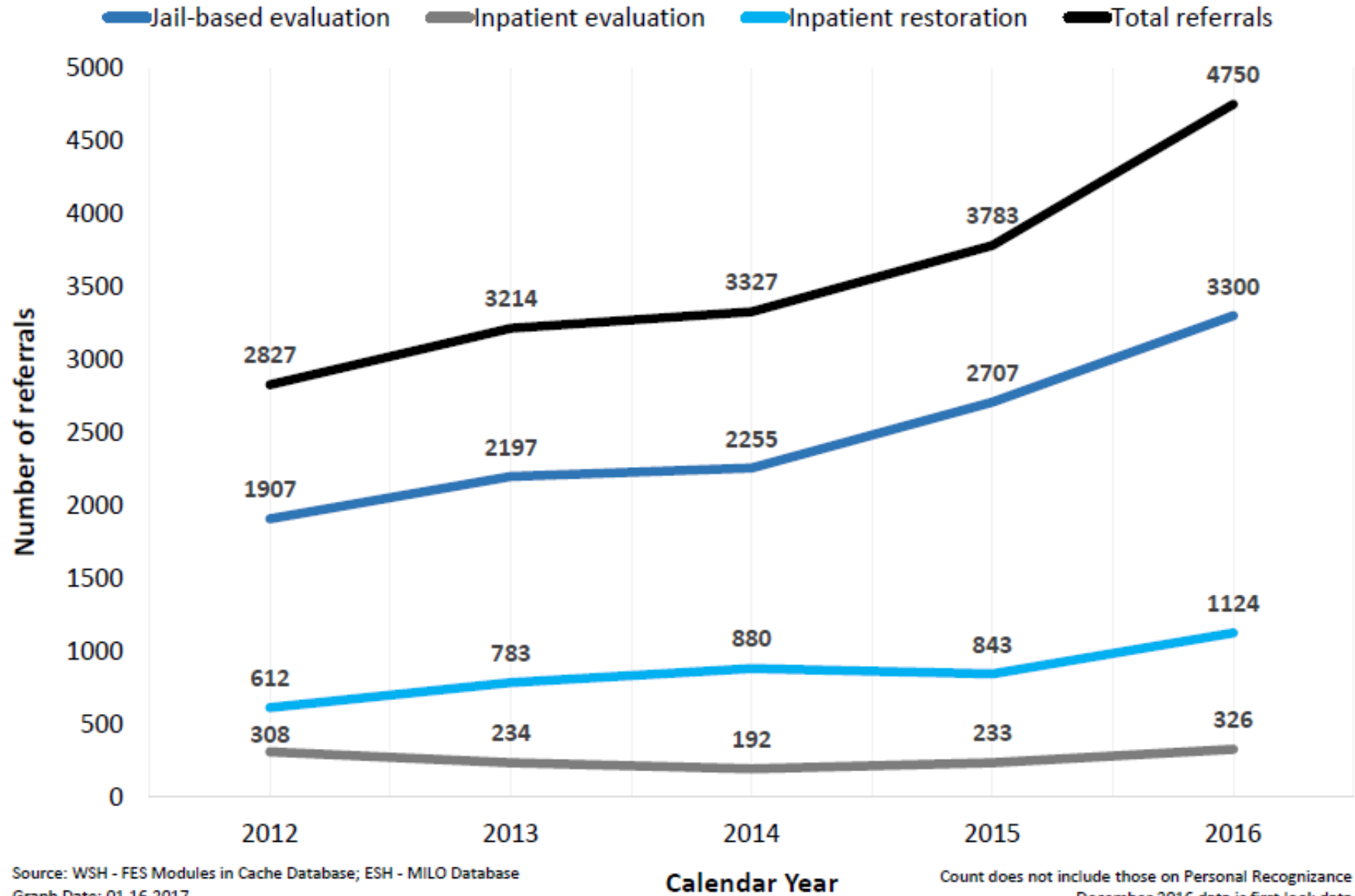
Progress made--demand explodes

Restoration orders



	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	May-17
WSH-RESTORATION	61	64	80	65	68	71	67	95	104	74	81	98	84	94	108	81	99
ESH-RESTORATION	15	16	18	13	19	19	11	7	21	19	18	12	19	22	18	19	18

Statewide: Count of Referrals by Order Type, CY 2012 - 2016



Source: WSH - FES Modules in Cache Database; ESH - MILO Database
Graph Date: 01.16.2017

Count does not include those on Personal Recognizance
December 2016 data is first look data

Request for Contempt

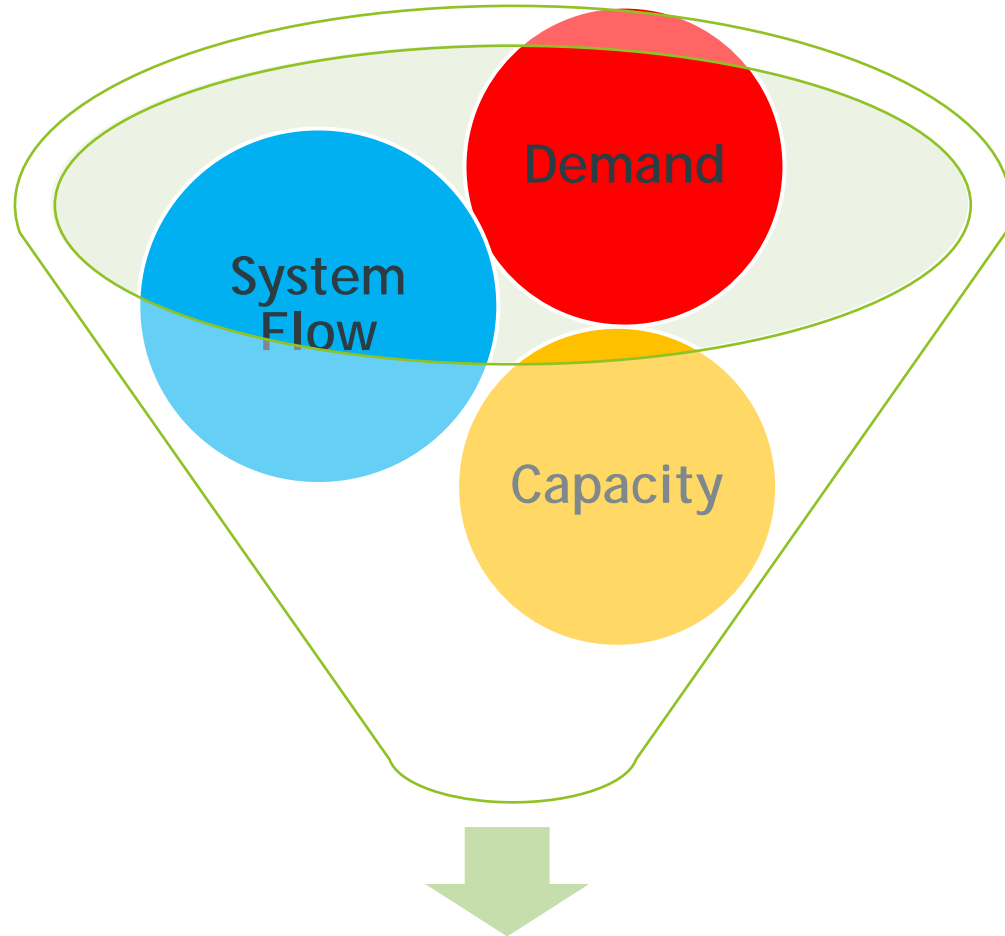
- ▶ Following the extended May, 2016 deadline, Plaintiffs ask the court to hold the Department in contempt
- ▶ Federal contempt law is unfriendly to complex cases like this one
- ▶ Despite extraordinary efforts, because substantial compliance remained elusive, the Department was found in contempt
- ▶ Plaintiffs also requested that the court order numerous specific actions, which were rejected

Penalties for Contempt

\$23.1 Million to date

TOTALS FOR THE STATE HOSPITALS										
DATE FINE INCURRED	\$500 FOR 8-13 DAYS				\$1,000 FOR 14 DAYS AND OVER				TOTALS	
	INPATIENT EVALUATIONS		RESTORATIONS		INPATIENT EVALUATIONS		RESTORATIONS			
DATE	CASES*	DOLLARS	CASES*	DOLLARS	CASES*	DOLLARS	CASES*	DOLLARS	CASES*	DOLLARS
5/12/2017	3	\$1,500	13	\$6,500	20	\$20,000	76	\$76,000	112	\$104,000
5/13/2017	3	\$1,500	18	\$9,000	20	\$20,000	76	\$76,000	117	\$106,500
6/12/2017	6	\$3,000	10	\$5,000	23	\$23,000	65	\$65,000	104	\$96,000
6/13/2017	4	\$2,000	11	\$5,500	22	\$22,000	62	\$62,000	99	\$91,500
TOTALS	172	\$86,000	456	\$228,000	660	\$660,000	2,212	\$2,212,000		\$3,186,000

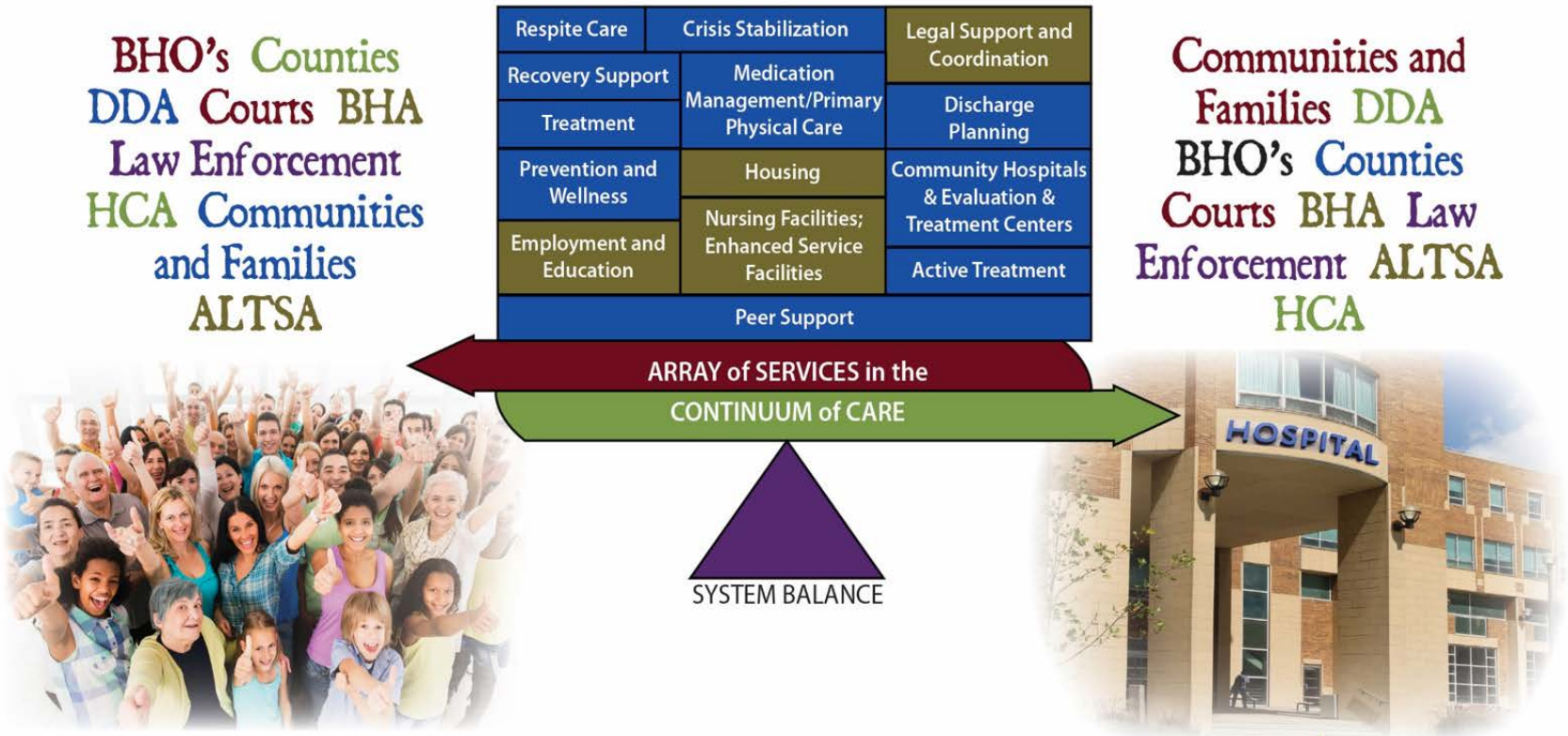
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Timely Competency Services

System Partners Influence Outcomes

Behavioral Health System **Continuum of Care**



Transforming Washington's Behavioral Health System

Beds and Services that Reduce or Avoid Admission to State Hospitals or Jails



Services that provide support to remain in home or community based settings and reduce or avoid admission to State Hospitals or Jails



Supportive Housing Benefits Administrator to Coordinate Access to Beds/Placements

Courts/Jails



State Hospitals/Alternate Forensic Restoration Facilities



Western State Hospital
Civil 557
Forensic 285

Eastern State Hospital
Civil 192
Forensic 125

Alternate Restoration Facilities
Yakima 24
Maple Lane 30

Beds and Services that Reduce or Avoid Return to State Hospitals or Jails



Services that provide support to remain in home or community based settings to avoid return to State Hospitals or Jails



Supportive Housing Benefits Administrator to Coordinate Access to Beds/Placements

State Hospital improvement investments to help people recover and return to the community more quickly

- Peer Supports and Substance Use Disorder (SUD) Treatment
- Financial Workers and Case Managers to help individuals transition out of hospital
- SIA Improvements to meet federal standards

The Future from a Legal Perspective

- ▶ The major legal questions of this case are answered
- ▶ Appeal of ancillary issues, including attorney's fees, still pending (\$2.2 M to date)
- ▶ Litigation focused on the Department's residential facilities will continue
- ▶ Regular status hearings will continue
- ▶ Level of involvement of court monitor continues to increase
- ▶ Possibility of additional contempt orders

Our journey continues...



For more information...

Office of Forensic Mental Health Website:

<https://www.dshs.wa.gov/bha/office-service-integration/office-forensic-mental-health-services>

Relevant Statutes and Legislation

RCW 10.77 <http://app.leg.wa.gov/rcw/default.aspx?cite=10.77>

SB 6492 (2012) <http://lawfilesexternal.leg.wa.gov/biennium/2011-12/Pdf/Bills/Senate%20Passed%20Legislature/6492-S.PL.pdf>

SB 5177 (2015) <http://lawfilesexternal.leg.wa.gov/biennium/2015-16/Pdf/Bills/Senate%20Passed%20Legislature/5177-S2.PL.pdf>

Trueblood Website:

<https://www.dshs.wa.gov/bha/division-behavioral-health-and-recovery/trueblood-et-al-v-washington-state-dshs>

Administrative Office of the Courts Standardized Form Orders

<http://www.courts.wa.gov/forms/?fa=forms.static&staticID=14#MentalProceedings>