

**Report to the Legislature**  
**Forensic Admissions and Evaluations – Performance Targets**

Senate Bill 6492  
As codified in RCW 10.77.068

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## EXECUTIVE SUMMARY

On May 1, 2012, RCW 10.77 was amended by Substitute Senate Bill 6492. The amendment made changes to the evaluation process, set timelines for the admission and evaluation of forensic mental health patients, and required the State Hospitals to set up a system of reporting and accountability when performance targets were not met. As mandated by RCW 10.77.068(3), the following quarterly report explains the extent to which the hospitals deviated from performance targets and describes the hospital's plans to meet these performance targets.

The trend line for 2012, shows a significant reduction in wait times and wait list numbers. Nevertheless, in the fourth quarter of 2012, Western State Hospital met performance targets approximately thirty percent of the time, and wait times averaged almost double the timelines set forth in the Act. Recruitment and retention issues, and development of inexperienced staff contributed significantly to waitlists during the quarter. Accountability standards are established, and are used to manage productivity of employees whose primary work duty is conducting evaluations.

The situation has been similar at Eastern State Hospital, just with a smaller number of referrals and staff. The trend line for 2012 shows great fluctuation in the wait times and wait list numbers. In the fourth quarter of 2012, Eastern State Hospital met performance targets approximately twenty five percent of the time, and wait times averaged double the timelines set forth in the Act. Recruitment issues continue to significantly impact the waitlists. Accountability standards are established and used to manage productivity of employees whose primary work duty is conducting evaluations.

### Deviation from Performance Targets

RCW 10.77.068 (1)(a) phases in performance targets at six and twelve months after the effective date of the legislation. On November 1, 2012, the following performance targets became active:

(i) For a state hospital to extend an offer of admission to a defendant in pretrial custody for legally authorized treatment or evaluation services related to competency, or to extend an offer of admission for legally authorized services following dismissal of charges based on incompetent to proceed or stand trial, seven days or less;

(ii) For completion of a competency evaluation in jail and distribution of the evaluation report for a defendant in pretrial custody, seven days or less;

Effective May 1, 2013 an additional performance target is phased in as follows:

(iii) For completion of a competency evaluation in the community and distribution of the evaluation report for a defendant who is released from custody and makes a reasonable effort to cooperate with the evaluation, twenty-one days or less.

## **BACKGROUND**

Both the State and Federal Constitutions protect the rights of people accused of crimes to be represented by counsel. For a defendant to avail himself or herself of this right, he or she must be able to understand the legal proceedings and assist counsel. A person who is too mentally ill or cognitively impaired to assist counsel, is deemed incompetent and may not be prosecuted. In Washington, the rights of incompetent defendants, and the procedures for protecting those rights, are codified in RCW 10.77. RCW 10.77.060 sets forth that the Secretary of DSHS will designate experts to evaluate defendants when there is reason to doubt their competence.

Over the past decade, there has been consistent and rapid growth in the rate at which defendants are referred. While crime rates have trended downwards over the past decade, referrals for competency evaluations increased over 80% between 2001 and 2012. In the face of this rapid change, the Department and the State Hospitals have embarked on innovative programs. As recently as 1999, a large majority of competence evaluations were conducted during fifteen day admissions to the State Hospitals. However, the hospitals have demonstrated that timely, cost-efficient, and reliable evaluations can be conducted in correctional settings and in the community. As of 2012, approximately 80% of evaluations are conducted without the need to admit the defendant into the hospital. With the passage of Substitute Senate Bill 6492, there is now an explicit legislative presumption that evaluations will occur in corrections or the community except in limited cases. Other innovations have included the development of a postdoctoral training program to meet the increased demand for forensic evaluators, the deployment of evaluators to high utilization localities, and standardized practices for conducting evaluations.

Even with these innovations, the increasing demand for services overwhelmed the department's capacity. By 2011, the waitlist for evaluations approached 400, with out of custody defendants often waiting more than six months for evaluation. The State has also struggled to retain experienced forensic evaluators, who have a highly specialized and marketable skill set. Between 2009 and 2012, Western State hospital lost through attrition, 23 evaluators, and almost half of the recruitments were cancelled due to the absence of qualified candidates. Eastern State Hospital has had similar recruitment difficulties with one evaluator position sitting vacant for over two years. Against this backdrop, the Department and the state hospitals collaborated with lawmakers in the development of Substitute Senate Bill 6492, which increased efficiencies in the legislative framework for evaluations, while simultaneously setting performance targets related to timeliness. This quarterly report is part of a system of accountability to monitor progress towards those performance targets.

## **ANALYSIS**

### Performance Targets

Substitute Senate Bill 6492 has an effective date of May 1, 2012. Performance targets related to defendants being detained in-custody or awaiting admission into the State Hospitals were phased in over six months, becoming fully effective on November 1, 2012. Additional targets related to evaluations of out-of-custody defendants are being phased in, and are not yet subject to reporting requirements.

For defendants awaiting admission to the hospital, the target is to offer admission within seven days of receiving a completed referral. For defendants awaiting evaluation in the jail, the target is to have the

evaluation completed and delivered to the referring court within seven days of receiving a completed referral. The Department is currently looking into best practices, standards and timeframes in other states, as the targets currently in RCW 10.77.068 (1)(a) appear to be ambitious and may need to be reevaluated.

The following table summarizes performance on these targets in the Fourth Quarter of 2012:

<b>Western State Hospital</b>			
<b>Patient Referral Type</b>	<b>Total Referrals</b>	<b>Average Time to Completion</b>	<b>Percentage completed in Seven Days</b>
<b>Awaiting Admission to Hospital</b>			
Felony Evaluation	36	26.2	19.4%
Felony Restoration	84	12.0	36.9%
Misdemeanor Evaluation	4	20.0	25.0%
Misdemeanor Restoration	18	29.9	0.0%
Civil Conversion*	14	2.4	100.0%
<b>In Custody Awaiting Evaluation</b>			
Felony Evaluation	75	13.5	16.0%
Misdemeanor Evaluation	150	12.6	19.3%
<b>Total</b>			
	381	16.7	31.0%
<b>Eastern State Hospital</b>			
<b>Patient Referral Type</b>	<b>Total Referrals</b>	<b>Average Time to Completion</b>	<b>Percentage completed in Seven Days</b>
<b>Inpatient</b>			
Felony Evaluation	4	17.8	0.0%
Felony Restoration	16	14.8	12.5%
Misdemeanor Evaluation	2	43.0	0.0%
Misdemeanor Restoration	3	25.0	33.3%
Civil Conversion*	4	5.0	100.0%
<b>In Custody Awaiting Evaluation</b>			
Felony Evaluation	28	13.0	21.4%
Misdemeanor Evaluation	17	6.4	5.9%

Total		
	74	17.8
		24.7%

\*These are felony and in-custody misdemeanor cases that are dismissed due to the defendant's incompetency to stand trial and are referred for evaluation for civil commitment, and are commonly referred to as "Forensic Flips"

### **Deviation from Performance Targets**

During 2012, for Western State Hospital, there were significant reductions in both the number of defendants on the waitlist and the average duration of the waitlist. The inpatient service did not meet the performance targets due to 1.5 FTE vacancies for evaluator positions persisting through the relevant time period. However, the evaluators in the inpatient unit exceeded individual productivity goals of 10-12 evaluations per month. The number of patients waiting over seven days for admission dropped from over 100 in December of 2011 to 23 in December of 2012. While there was considerable improvement in wait times, the average wait time was still approximately double the target of seven days, and the target of seven days was only met in approximately 31% of cases. Notably, while the trend line was towards reduced wait times, there was considerable variation during the year, with the waitlist growing considerably during times when there were vacant evaluator positions, and shrinking when there was full and stable staffing.

For Western State Hospital's in-custody (in the local jail) evaluation service, there was stable staffing through the year. This service approached but did not meet individual evaluator productivity goals of 10-12 evaluations per month. However, because the service was fully staffed, and was primarily staffed with experienced evaluators who have higher production expectations, there was a trend towards decreased wait times. In 2012, the in-custody waitlist ranged from a high of 111, to an end of fourth quarter number of 22. However, as with the inpatient unit, average wait times were approximately double the target of seven days, and less than 20% of defendants had their evaluations completed within seven days.

Eastern State Hospital has one forensic evaluator assigned to complete inpatient competency evaluations. At Eastern State Hospital the inpatient competency evaluations and competency restorations are admitted to one ward. As the number of community competency evaluations continue to increase, there will be an increase in the number of competency restorations that must be admitted and take priority over admissions for competency evaluation. Eastern State Hospital's forensic admission ward capacity is 26.

RCW 10.77.068 (1)(c) includes a non-exclusive list of factors outside of the department's control that could impact performance targets. During the fourth quarter of 2012, this data was captured in a comment field, and as such it is not readily available for statistical analysis. The database has been now been modified to capture this data for statistical analysis. In fourth quarter 2012, evaluator resources were the overwhelming determinant of timeliness. As Western State Hospital more closely approaches performance targets, analysis of external factors will take on increasing importance. However, given the margins by which the Hospital is currently deviating from performance targets, inclusion of this data would not have altered the overall analysis below.

While the trend data appears favorable, some caution is advised in projecting that the current waitlists will continue declining in the absence of additional measures. Most importantly, evaluators from the out-of-custody service were utilized to fill in vacancies in the inpatient service. Approximately two thirds of the waitlist is represented by out-of-custody defendants. The out-of custody waitlist did not see the same types of gains seen by the other two services.

## **Plan for Meeting Targets**

### Management of current resources

During the phase-in period of the Act, and into the fourth quarter of 2012, productivity standards for evaluators were formalized in the position description forms (PDFs). These productivity standards were based on a time study conducted 06/16/12, by Tara Fairfield, Ed.D. Monthly productivity for each evaluator is monitored in Western State Hospital's *Cache* database. Evaluators who are underperforming are made aware of deficiencies and are initially assisted with overcoming barriers. If deficiencies continue, disciplinary action may follow. At present, all evaluators in the inpatient unit are exceeding individual performance targets. Over fifty percent of the evaluators serving the jails and community are exceeding, meeting, or within 10% of performance targets. Both individual and system barriers are being addressed for those evaluators not meeting performance targets.

### Increasing efficiency

A workgroup has been convened to develop a more streamlined report template. Two streamlined templates are currently being piloted in Western State Hospital's North Regional Office and the in-custody evaluations section. One template is simplified specifically for repeat evaluations of misdemeanor and non-violent offenders. The second template may be appropriate for wider use, and is designed to simplify reports in cases where risk assessment is not required. In evaluating the efficiency of the reports, we are monitoring whether there is an increase in requests for testimony when there is less data contained in the reports.

### Recruitment and Retention

In 2012, there were approximately 3000 referrals for competency evaluations, competency restorations and forensic flips to Western State Hospital's Center for Forensic Services. At the presumptive caseloads for experienced evaluators, 22 full-time evaluators would produce *at* the rate of referral. An additional two evaluators producing at the presumptive rate would be needed to eliminate the current 300 person wait list in one year. It should be noted that the number of evaluators assumes that there is no time loss for illness, vacancies or training, and assumes that there are no evaluators in-training. As noted below, neither assumption is robust. Attrition affects this number in two ways. First, during the training period, new evaluators carry a reduced case load. Second, positions remained unfilled for an average of 76 days. There were 13 requests to fill evaluator vacancies in 2012, seven of which were cancelled due to no eligible candidates. Total time loss to vacant positions, not including training and orientation time was 460 days. Western State Hospital competes for candidates with both the private sector, and two federal facilities with markedly higher pay scales.

In 2012, eight Eastern State Hospital forensic evaluators completed 845 evaluations. Eastern State Hospital continues to experience difficulty in recruitment as well, with recruitment efforts in place for more than two years. The forensic evaluators have remained stable with no loss through attrition.

Training programs have historically been a significant contributor to recruitment and retention. Approximately one quarter of current evaluators completed some portion of their formal training at Western State Hospital, and additional one third have been involved in running the training programs. There are no qualified candidates on the register for current vacancies. Strategies considered for improving recruitment and retention include strengthening and broadening training opportunities such as the APA accredited internship, improving professional development opportunities, decreasing the amount of time beyond forty hours that overtime-exempt evaluators are currently working. The Hospital does have a history of allowing treatment psychiatrists to earn overtime by conducting

evaluations. A similar system of allowing evaluators who have met individual performance targets to earn overtime or bonuses for additional evaluations might also aid in recruitment and retention. Some of the strategies considered are not fully within the Hospital's control, as they may either require additional funding, or may be not be consistent with the current collective bargaining agreement. The Department will analyze the costs of these options for the 2014 budget.

#### Utilize Other Hospital Resources for Tasks not Requiring Forensic Specialists

Forensic evaluators currently perform almost all of the civil commitment evaluations for patients who entered the system for evaluation of competency (forensic flips). These types of evaluations are not statutorily required to be performed in the state hospital, nor do they require a forensic specialist, as these can be performed either a designated mental health professional (DMHP) or by ward-based staff. The Hospital is currently ensuring that ward-based psychologists and psychiatrists understand the procedures for civilly committing patients who are converted from forensic commitments. It is anticipated that forensic evaluators will have a decreasing role with civil conversion, and will be able to focus on forensic evaluations.

As at Western State Hospital, the forensic evaluators at Eastern State Hospital complete the petition for conversion from forensic to civil commitment. If a defendant who was evaluated for competency in the community is admitted to the hospital for competency restoration, the professional who completed the evaluation follows the patient through the course of restoration, completing assessments and reports to the court. The forensic evaluators at Eastern State Hospital also complete the Forensic Risk Assessments required as part of the presentation to the Public Safety Review Panel. While this is not a large number for each evaluator annually, these evaluations take a large amount of time to complete.

#### Collaborating with Partners in the Courts and Detention Centers

Except in limited circumstances, Substitute Senate Bill 6492 encourages our partners in the Courts to order evaluations to be conducted in detention or in the community. Many of the less populated counties have been slow to adapt to the changed expectations, and continue to order more resource intensive inpatient evaluations. As the statute does give the courts discretion as to whether to order inpatient evaluations, it will be incumbent on the hospitals to educate the courts about the types of cases that can be reliably evaluated without the need for inpatient hospitalization.

Eastern State Hospital is beginning the discussions with outlying counties to consider utilizing video conferencing to conduct the evaluations. It is anticipated this option will save evaluator travel time, allowing more time for additional evaluations and completion of reports to court.

## **CONCLUSION**

Substitute Senate Bill 6492 was adopted largely in response to a crisis of rapidly growing referrals and extraordinary wait times for defendants awaiting evaluation at the State Hospitals. In 2012, there were reductions in wait times, but average wait times remain close to double the performance targets of seven days, and approximately 30% of Western State Hospital's and 25% of Eastern State Hospital's evaluations are conducted within the recommended timeframes. It appears unlikely that there will be significant change in the underlying market forces creating shortages of evaluators in either geographic location. Thus, the hospitals are actively pursuing alternative strategies and more efficient allocation of existing resources.