

**REPORT TO THE LEGISLATURE**

**Forensic Admissions and Evaluations – Performance Targets 2020  
Third Quarter (July 1, 2020-September 30, 2020)**

Substitute Senate Bill 6492, Section 2 (Chapter 256, Laws of 2012)  
As amended by Substitute Senate Bill 5889, Section 1 (Chapter 5, Laws of 2015)  
RCW 10.77.068(3)

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## BACKGROUND

On May 1, 2012, Substitute Senate Bill (SSB) 6492 added a section to chapter 10.77 RCW that established performance targets for the “timeliness of the completion of accurate and reliable evaluations of competency to stand trial and admissions for inpatient restoration services related to competency to proceed or stand trial for adult criminal defendants.” These targets were codified under RCW 10.77.068 and phased in over six months to one year.

After full implementation of each performance target, the bill required the Department of Social and Health Services (DSHS) to report to the executive and the legislature following any quarter in which it does not meet the performance target. This reporting must address (1) the extent of the deviation, and (2) any corrective action being taken to improve performance.

On July 24, 2015, SSB 5889 amended RCW 10.77.068. The bill retained the performance targets for competency services but added to these a set of “maximum time limits” phased in over one year. After full implementation of the maximum time limits, SSB 5889 required DSHS to report to the executive and the legislature following any quarter in which it does not meet each performance target or maximum time limit.

As a result of these two bills, current performance targets and maximum time limits under RCW 10.77.068(1)(a) are as follows:

- (i) For a state hospital to extend an offer of admission to a defendant in pretrial custody for legally authorized evaluation services related to competency, or to extend an offer of admission for legally authorized services following dismissal of charges based on incompetence to proceed or stand trial:
  - (A) A performance target of seven days or less; and
  - (B) A maximum time limit of fourteen days;
- (ii) For a state hospital to extend an offer of admission to a defendant in pretrial custody for legally authorized inpatient restoration treatment related to competency:
  - (A) A performance target of seven days or less; and
  - (B) A maximum time limit of fourteen days;
- (iii) For completion of a competency evaluation in jail and distribution of the evaluation report for a defendant in pretrial custody:
  - (A) A performance target of seven days or less; and

(B) A maximum time limit of fourteen days, plus an additional seven-day extension if needed for clinical reasons to complete the evaluation at the determination of the department;

- (iv) 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, a performance target of twenty-one days or less.

Section (1)(b) of RCW 10.77.068 establishes the beginning and end points for applying the performance targets and maximum time limits set forth above. Section (1)(c) identifies six conditions that shall serve as defenses to an allegation that the department has exceeded the maximum time limits.

As mandated by RCW 10.77.068(3), the following quarterly report explains the extent to which the hospitals deviated from performance targets in quarter three (Q3) of 2020 (July 1, 2020 – September 30, 2020), and describes the plans to meet these performance targets.

## **COMPETENCY EVALUATION AND RESTORATION DATA**

RCW 10.77.068(1)(a)(i)(A) and (ii)(A), as amended by SSB 5889, establishes a performance target of seven days or less for the state hospitals to:

- 1) Extend an offer of admission to a defendant in pretrial custody for legally authorized treatment or evaluation services related to competency; or
- 2) Extend an offer of admission for legally authorized services following dismissal of charges based on incompetence to proceed or stand trial.

RCW 10.77.068(1)(a)(iii)(A), as amended by SSB 5889, sets a performance expectation that competency evaluations for a defendant who is in jail will be completed and distributed within seven days or less.

RCW 10.77.068(1)(a)(iv), as amended by SSB 5889, sets a performance expectation that competency evaluations for a defendant who is released from custody and makes a reasonable effort to cooperate with the evaluation will be completed and distributed within 21-days or less.

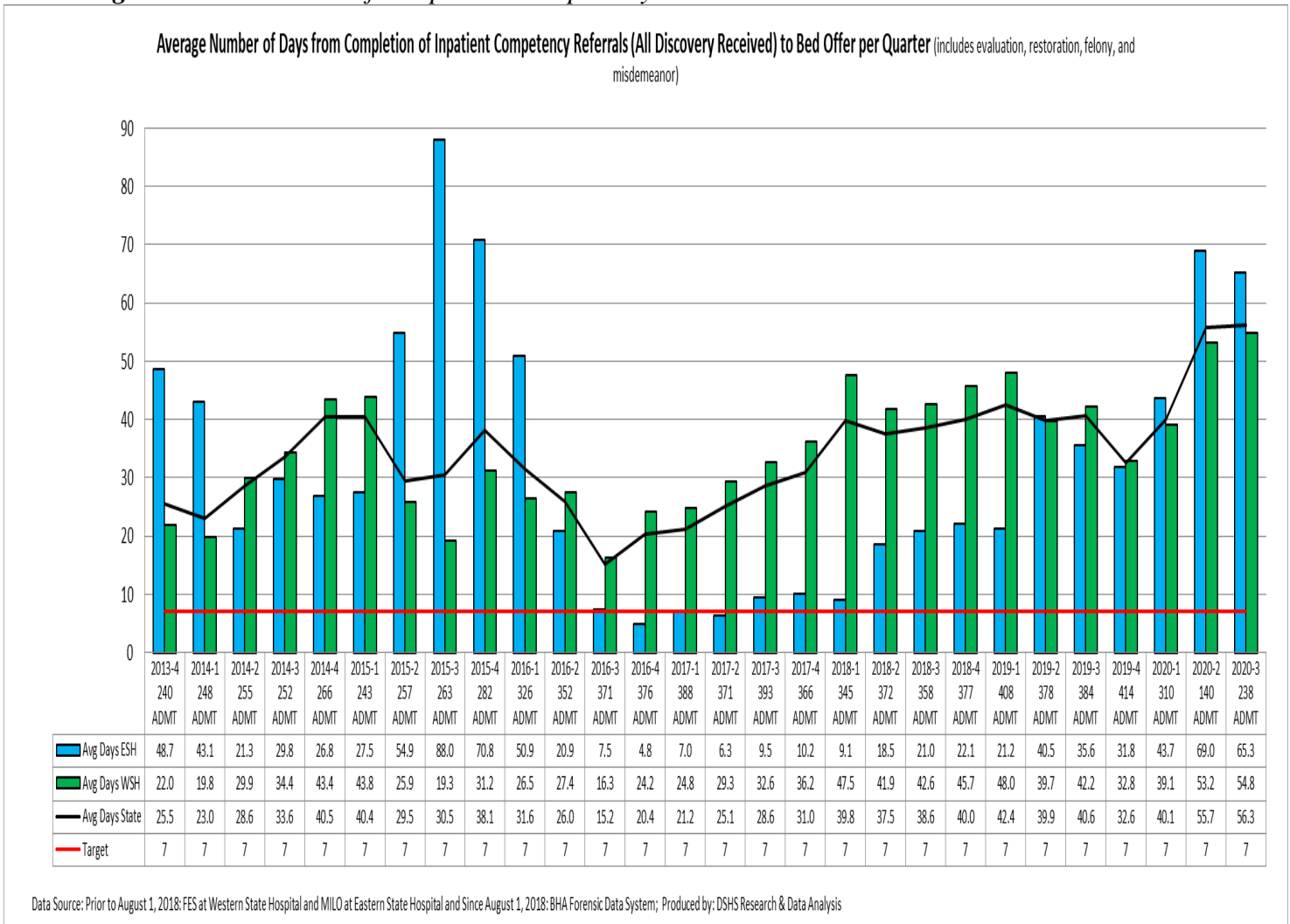
## **DATA ANALYSIS AND DISCUSSION**

This section of the report provides visual representation of data from the Forensic Data System as well as outcomes and drivers analysis. Additional detailed data and information about timely competency services is available in monthly reports published by DSHS in compliance with requirements established in the April 2015 Trueblood court order. These reports are available on the Office of Forensic Mental Health Services (OFMHS) website at:

<https://www.dshs.wa.gov/bha/trueblood-et-al-v-washington-state-dshs>

Please note that the data presented in this report differs slightly than in the Trueblood reports because the statute begins the count for timely service at the date of receipt of discovery while the Trueblood order begins the count at the date the court order for services is signed, or the date the court order for services is received depending on the number of days between signature and receipt of the order.

**Figure 1. Shows Results for Inpatient Competency Evaluation Cases**

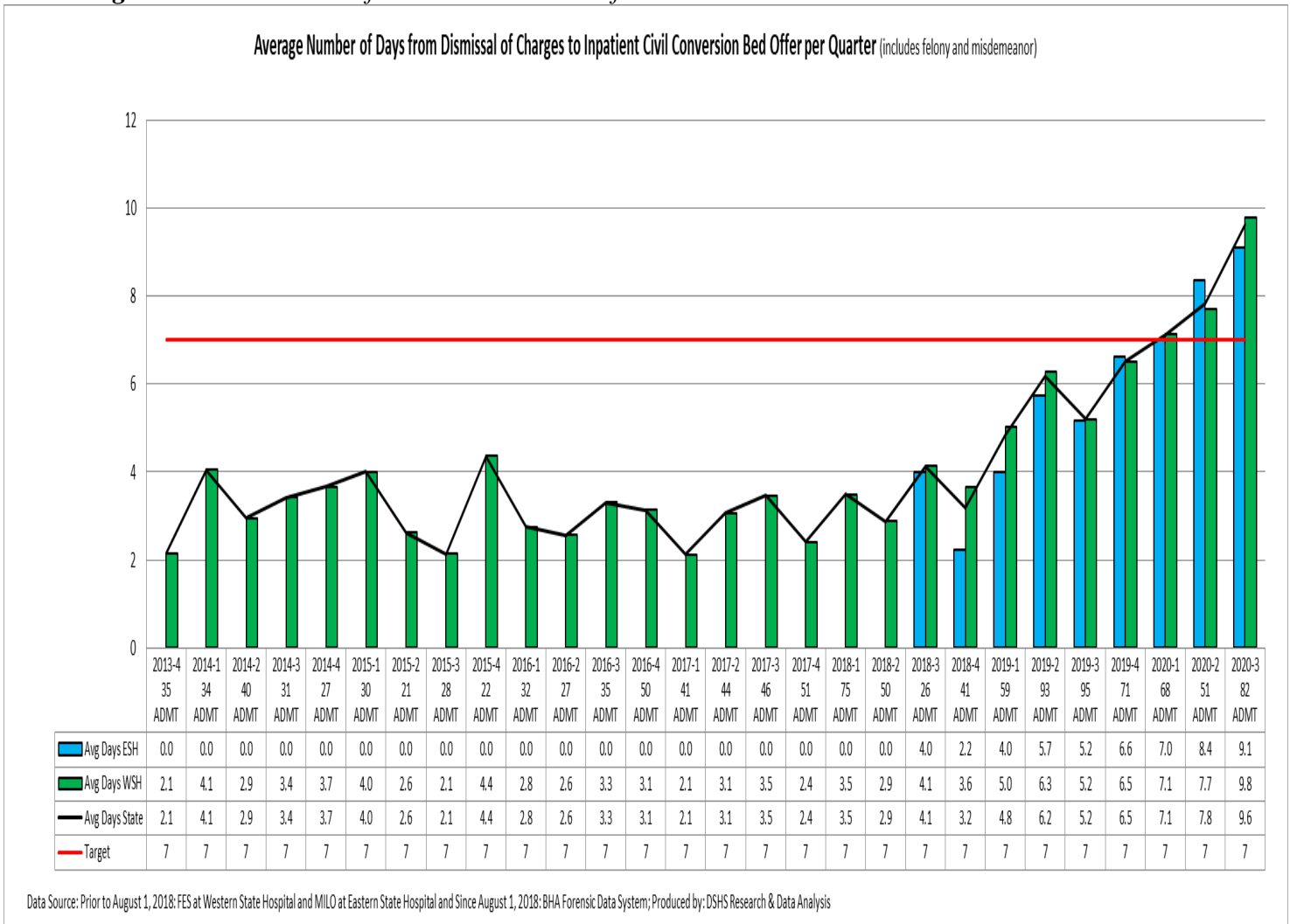


- Figure 1.** These are the average wait times related to hospital admission for inpatient competency evaluations only (including defendants released on personal recognizance (PR)).
- Outcomes:** During the third quarter of 2020, the number of admissions began rising again after two consecutive quarters of steep declines. Wait times at WSH, between referral for evaluation and bed offer, were essentially flat in Q3 2020. ESH wait times decreased slightly.
- Drivers:** Although Q1 and Q2 2020 admissions fell precipitously, due to measures enacted by the Behavioral Health Administration related to COVID-19 (restrictions on admissions for the months of March through June), community partners including public and private attorneys, the criminal court system, jails, other health care services providers, and the community at large were substantially closed during Q2 due to the pandemic and Governor’s stay at home orders, by Q3 admissions referrals began to climb again in Q3 as partner organizations began adjusting to re-opening modestly and learning to work with COVID-19. Occasional admissions holds as various forensic evaluation and restoration

wards experienced COVID-19 outbreaks among clients and staff, required the department to temporarily halt admissions and quarantine impacted wards. This caused further slowdowns resulting in reduced admissions and increased numbers of clients as well as time spent on inpatient competency wait lists.



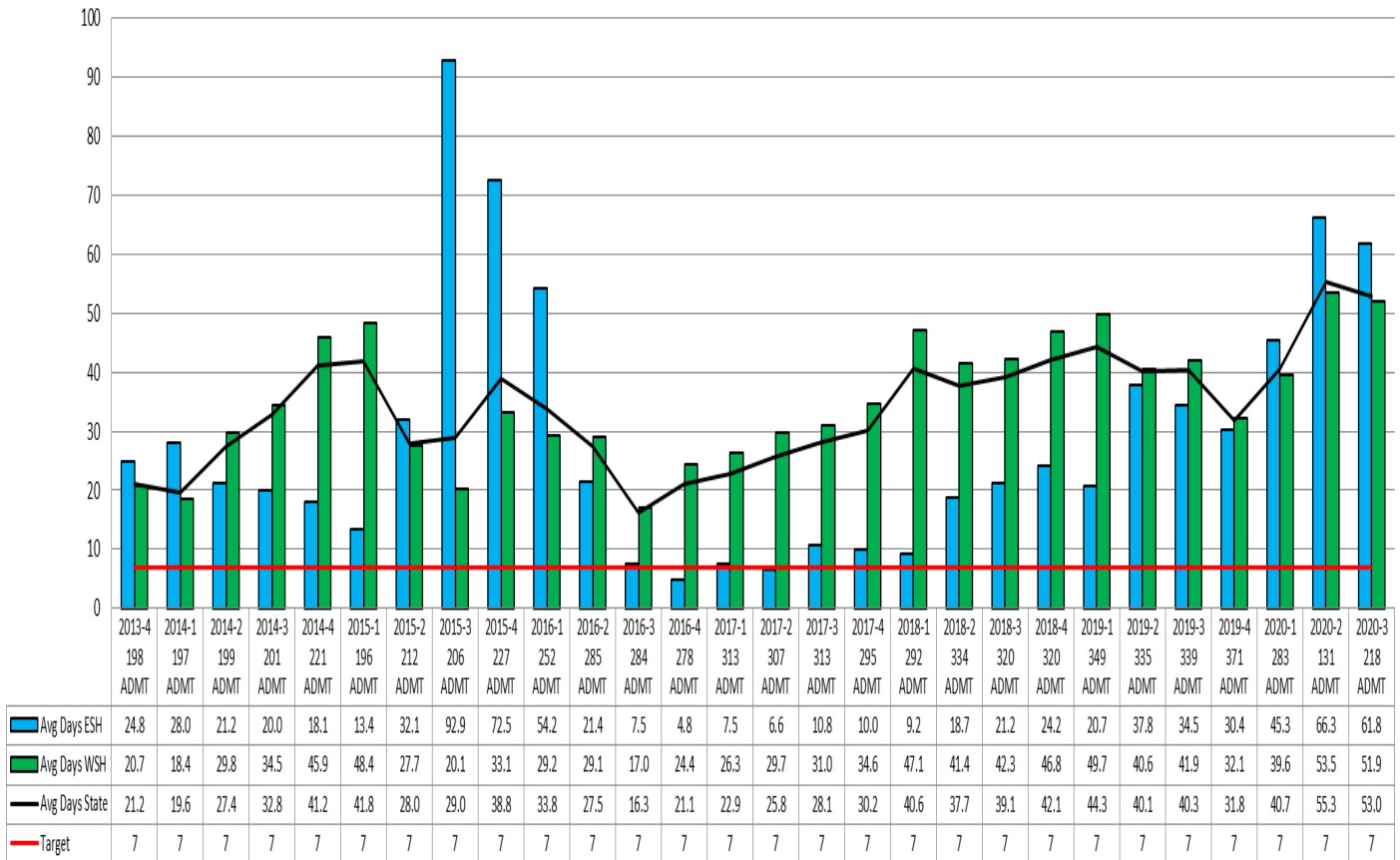
**Figure 2. Shows Results for Post-Dismissal Referrals**



- **Figure 2.** This chart reflects average days from dismissal of charges to an offer of admission at each state hospital and a combined state average.
- **Outcomes:** During the reporting period, ESH is at 9.1-days and WSH is at 9.8-days, which has resulted in the state’s overall average being pushed to 9.6-days.
- **Drivers:** This metric has been climbing for some time; however, the COVID-19 pandemic, which began in February 2020, continued to exert its influence on performance in this area and accelerated performance challenges. Success in this measure will be attributed to staff maintaining clear focus on prioritizing these beds for admissions and admitting as soon as a bed is available despite COVID outbreaks and ward holds on admissions at the two hospitals. One caveat with this prioritization is that it comes at the cost of negatively impacting Trueblood admissions because of this prioritization.

**Figure 3. Shows Results for Competency Restoration Cases**

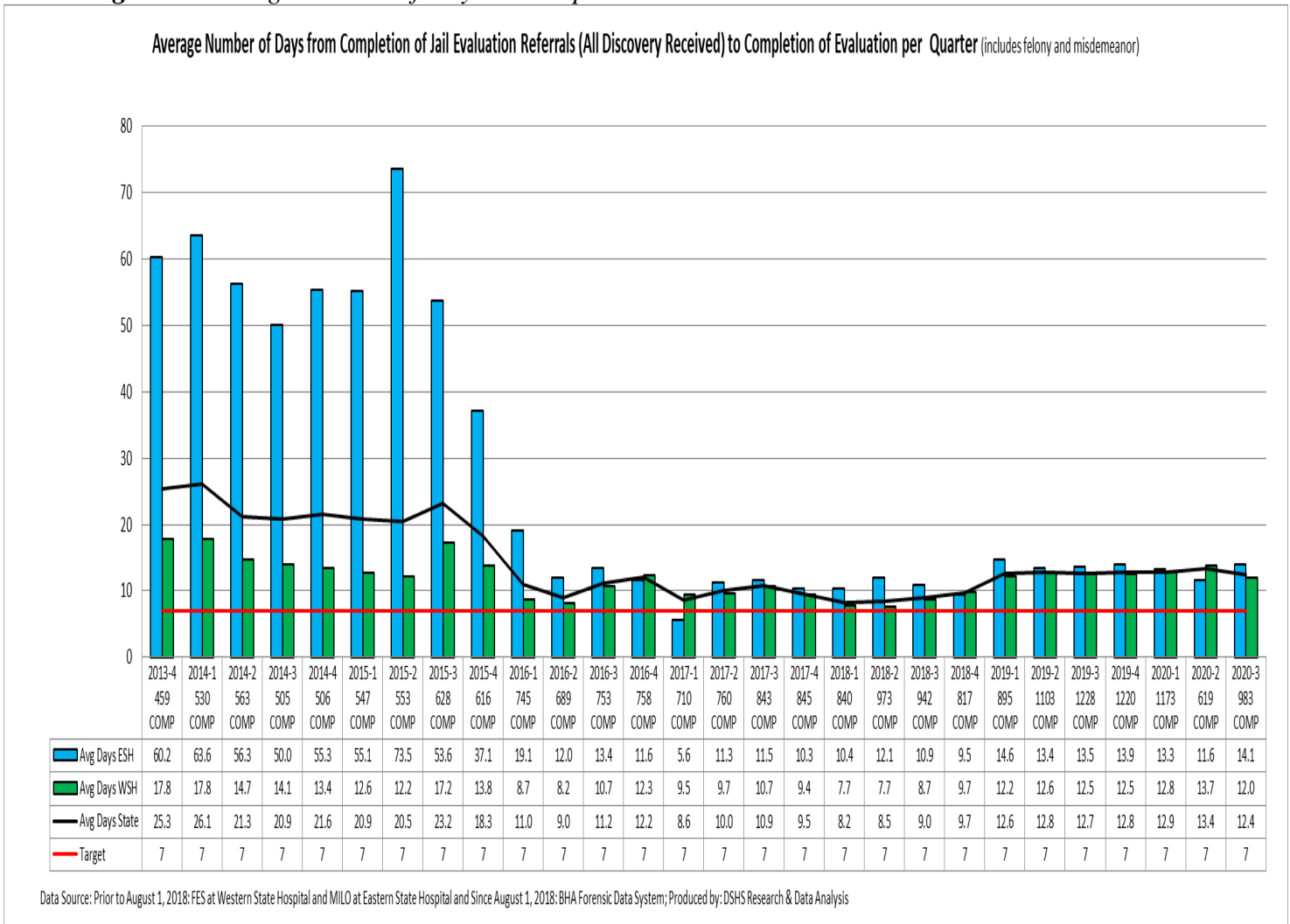
Average Number of Days from Completion of Inpatient Competency Restoration Referrals (All Discovery Received) to Bed Offer per Quarter (includes felony and misdemeanor)



Data Source: Prior to August 1, 2018: FES at Western State Hospital and MILO at Eastern State Hospital and Since August 1, 2018: BHA Forensic Data System; Produced by: DSHS Research & Data Analysis

- **Figure 3.** This chart reflects the average wait time for admission for competency restoration referrals only (including PRs).
- **Outcomes:** During the reporting period, wait times decreased at all facilities. As a result, the overall statewide average decreased by approximately five-percent.
- **Drivers:** Admissions referrals rebounded and 218 were completed during this reporting period. This comes after the previous quarter in which only 131 clients were admitted, marking the lowest number of completed admissions referrals during the time represented by this report (October 2013 – September 2020). Such low numbers are a direct result of the COVID-19 pandemic that began in February 2020. In response to the pandemic, the criminal court system began dismissing more cases and releasing more defendants on personal recognizance to improve the ability to social distance within jails during the pandemic. At the same time, PR cases were already in environments that could meet social distancing requirements in the community, and the system acted to severely limit its hearing capacity in response to COVID-19.

**Figure 4. Average Number of Days to Complete a Jail Based Evaluation**

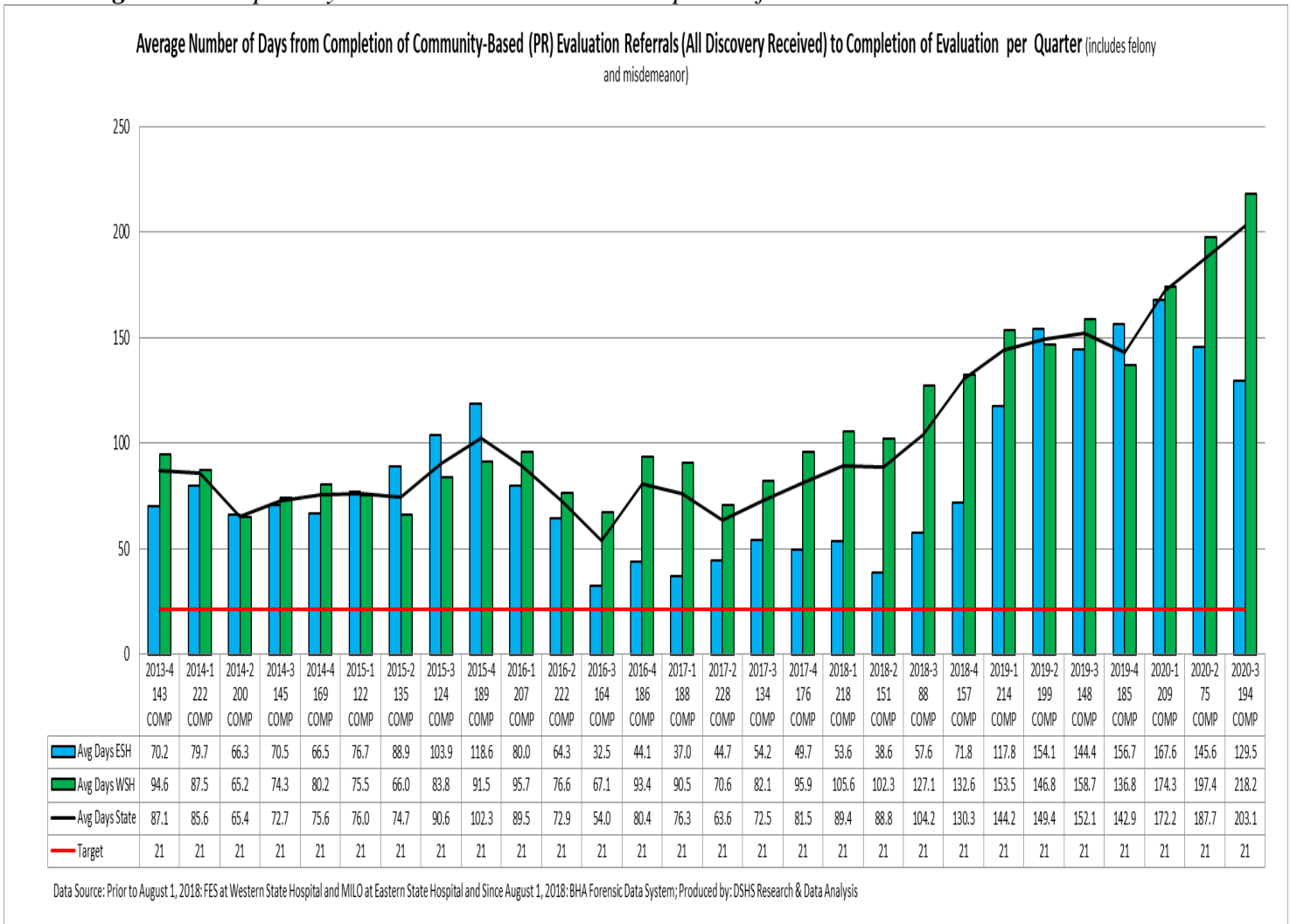


- Figure 4.** This chart provides information on the average number of days to complete a jail-based evaluation from the receipt of all discovery.
- Outcomes:** During the Q3 reporting period, WSH completion times decreased moderately and ESH completion times increased moderately resulting in an overall 1.0-day decrease statewide to 12.4-days on average. Following the Q2 collapse in evaluation demand, jail-based evaluation demand recovered to mid-2018 levels in Q3.
- Drivers:** Prior to commenting on the Q3 reporting period, it is important to revisit the context of Q4 2019 moving through Q2 2020. Q1 jail-based evaluation referrals declined slightly [3.9%] compared to Q4; however, it should be noted that a minimum of 1,100 jail-based evaluations had been conducted each of the last four quarters (prior to Q2 2020) when previously, no single quarter ever had more than 973, and only two quarters had even exceeded 900 evaluations completed in a single quarter, so while demand growth did not occur in Q4 2019 or in Q1 2020, referrals continued from already historically elevated levels. In an effort to both meet this demand and to comply with Phase 1 of the negotiated

Trueblood contempt settlement agreement, the Legislature funded and approved the department to hire 13 additional forensic evaluators beginning July 1, 2019. All of those evaluators had been hired, prior to the end of Q2 2020, and OFMHS has already recruited and hired the five approved fiscal year 2021 forensic evaluator positions. All five positions were filled prior to Q3's conclusion.

Due to the COVID-19 pandemic, the demand for jail-based evaluations collapsed in Q2 2020. Evaluation demand, for jail-based evaluations, had not been at this level since Q4 2015. This historic collapse in demand [-47.2% in Q2 to 619 evaluations] further serves to illustrate the significance of month-after-month of increases in forensic evaluations and demand for mental health care services that span years and the ways in which this shapes our systems over time. Already in Q3, demand for in-jail evaluations shows substantial recovery, relative to Q2, as the criminal court systems re-open, and all of our partners learn together how to continue serving clients in COVID-19 impacted systems.

**Figure 5. Competency Evaluation Time Frame Completion for PR Cases**



- Figure 5.** This chart provides information on the average number of days to complete PR evaluations from the receipt of all discovery.
- Outcomes:** During the Q3 reporting period, WSH saw an additional 9.5 percent increase in average completion time following a 37.3 percent cumulative increase since the Q4 2019 reporting period. ESH saw back-to-back moderate wait time decreases in Q2 and Q3 for a cumulative decline of 22.7 percent. The Q2 and Q3 declines followed Q1’s average completion time of 167.6-days that set a new high mark at ESH. WSH has set new high marks in average completion time in Q1 [174.3-days], Q2 [197.4-days], and again in Q3 [218.2-days] Completed orders system wide recovered in Q3 to 194 cumulative orders.
- Drivers:** The variability in and longtime upward trending completion time, from quarter-to-quarter, is attributed to resources having been directed to cases involving Trueblood class members, as the number one completion priority, based on established constitutional rights, from the Trueblood Court Order representing the negotiated contempt settlement agreement. Furthermore, as these were the only category of admissions being allowed at

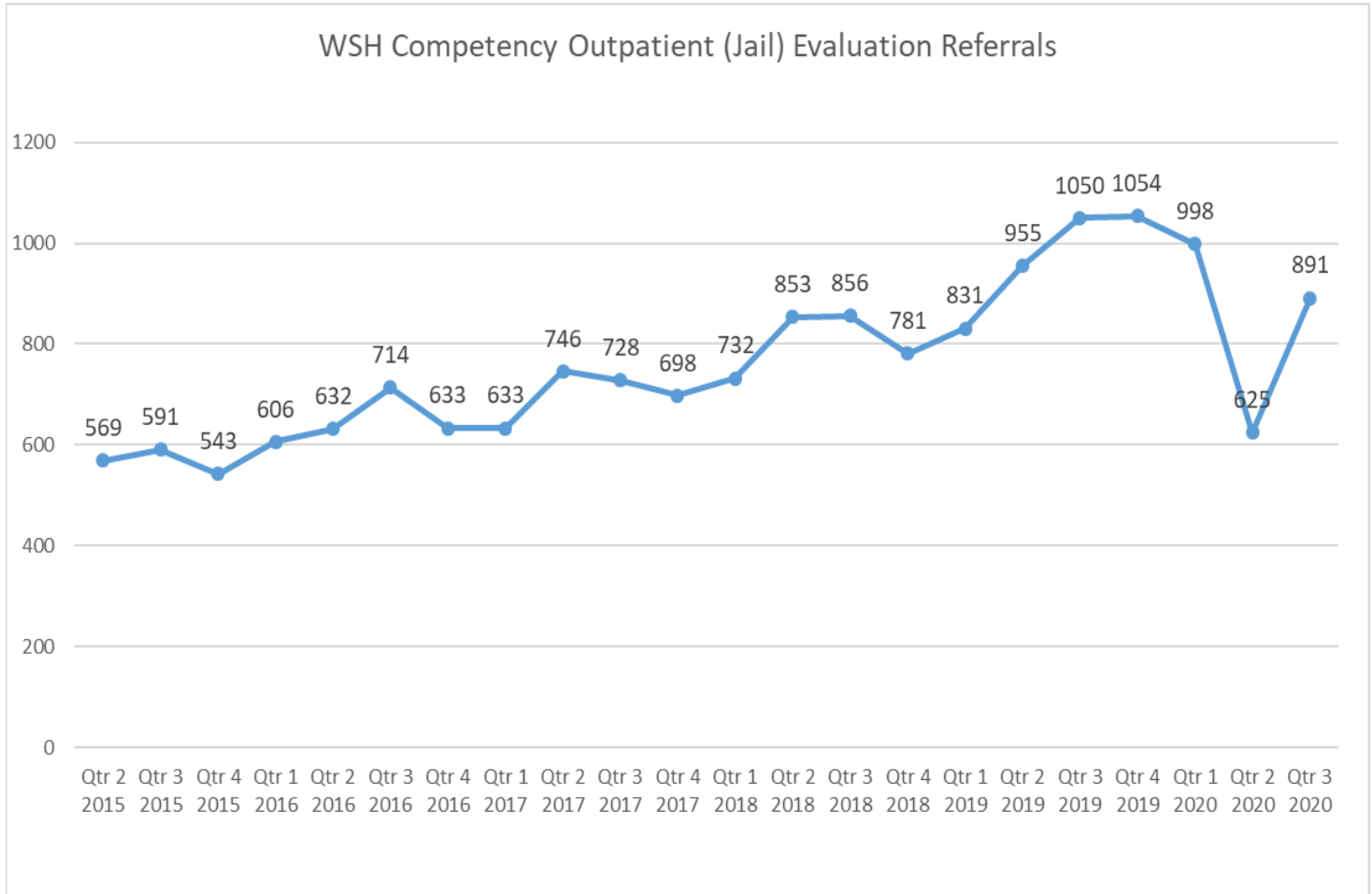
WSH in the month of March (combined with restrictions for other legal authorities), the number of referrals increased significantly. As such, resource allocation demands that DSHS focus its efforts in such a way as to mitigate, as much as possible, the impacts of these constitutional violations and related fines for jail-based evaluations (e.g., Figures 4 & 6-8). This has resulted in greater fluctuation with regard to performance measures in this category. Additionally, Figures 6-8 show continuously increasing pressure on system throughput as jail-based evaluation referrals continue to grow at record levels.

In response to the pandemic in late Q1 and throughout Q2, the criminal court system began dismissing more cases and releasing more defendants on personal recognizance to improve the ability to social distance within jails during the pandemic. At the same time, PR cases are a lower priority in a system that severely limited its hearing capacity in response to COVID-19. Most of these measures persisted in Q3 even as the court system re-opened on a limited basis.

## Global Referral Data

Figures 6-15 show global referral data to illustrate total orders signed by calendar quarter for jail-based evaluations, inpatient evaluations, and restoration services for WSH, ESH, and both hospitals combined. For Q3 2020, Figure 15 debuts to illustrate data from the new Outpatient Competency Restoration Program (OCRCP) implemented as part of the Trueblood decision's Phase 1 contempt settlement agreement.

**Figure 6.** Shows Total WSH Referrals for Jail-Based Evaluations



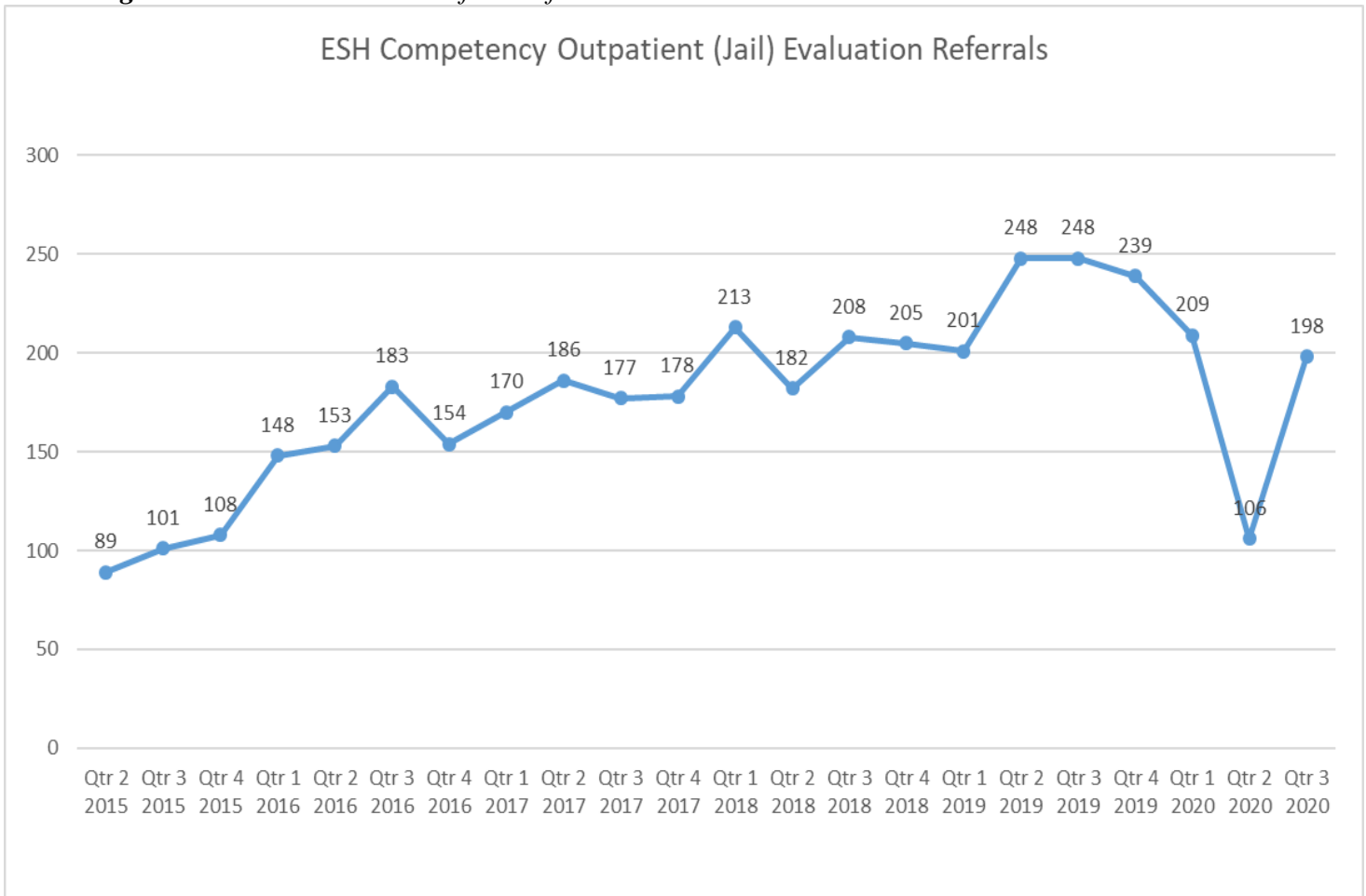
- **Figure 6.** This chart illustrates WSH total quarterly referrals for jail-based evaluations.
- **Outcomes:** During the reporting period, WSH saw a major 42.6 percent recovery in referrals from Q2 2020. The change from Q4 2019 to Q1 2020 was modest and conformed to the typical pattern of quarterly decline from Q4 to Q1 of the next year; however, the change from Q1 to Q2 was a precipitous drop. Prior to 2020, the referral numbers for the entire year represent, not only continued, but accelerated year-over-year growth in referrals (annual averages: 2016 = 646.25; 2017 = 701.25; 2018 = 805.5; 2019 = 972.75; Q1-Q3 2020 = 838).

- **Drivers:** Referrals for competency evaluation have increased significantly over most of the period illustrated above. With the exception of the sustained drop in demand beginning in March 2020 and continuing to date through the Q3 reporting period, due to the ongoing COVID-19 pandemic, this strongly suggests a “build it and they will come” effect; improved efficiency in providing consumers with a highly valued forensic service has itself increased the demand for that service. This is a well-known effect also seen in other supply and demand phenomena, such as the energy industry.

The ongoing drop in demand for jail-based referrals, referenced above as part of the pandemic, is part of the criminal court system’s strategy to mitigate COVID-19 exposure among staff and existing inmates by arresting, charging, and sending referrals for competency services in a much lower amount than prior to the pandemic.

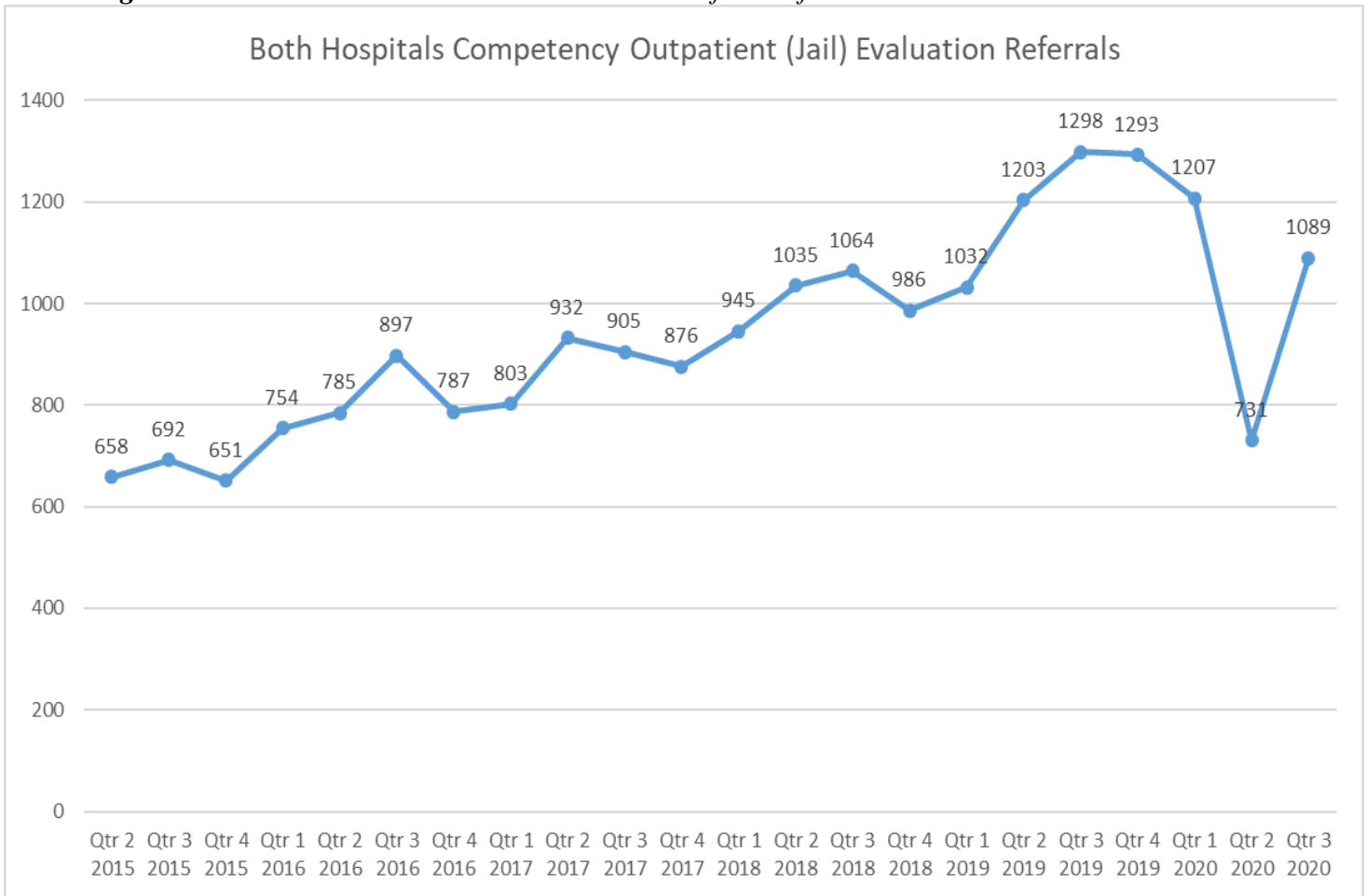


**Figure 7. Shows Total ESH Referrals for Jail-Based Evaluations**



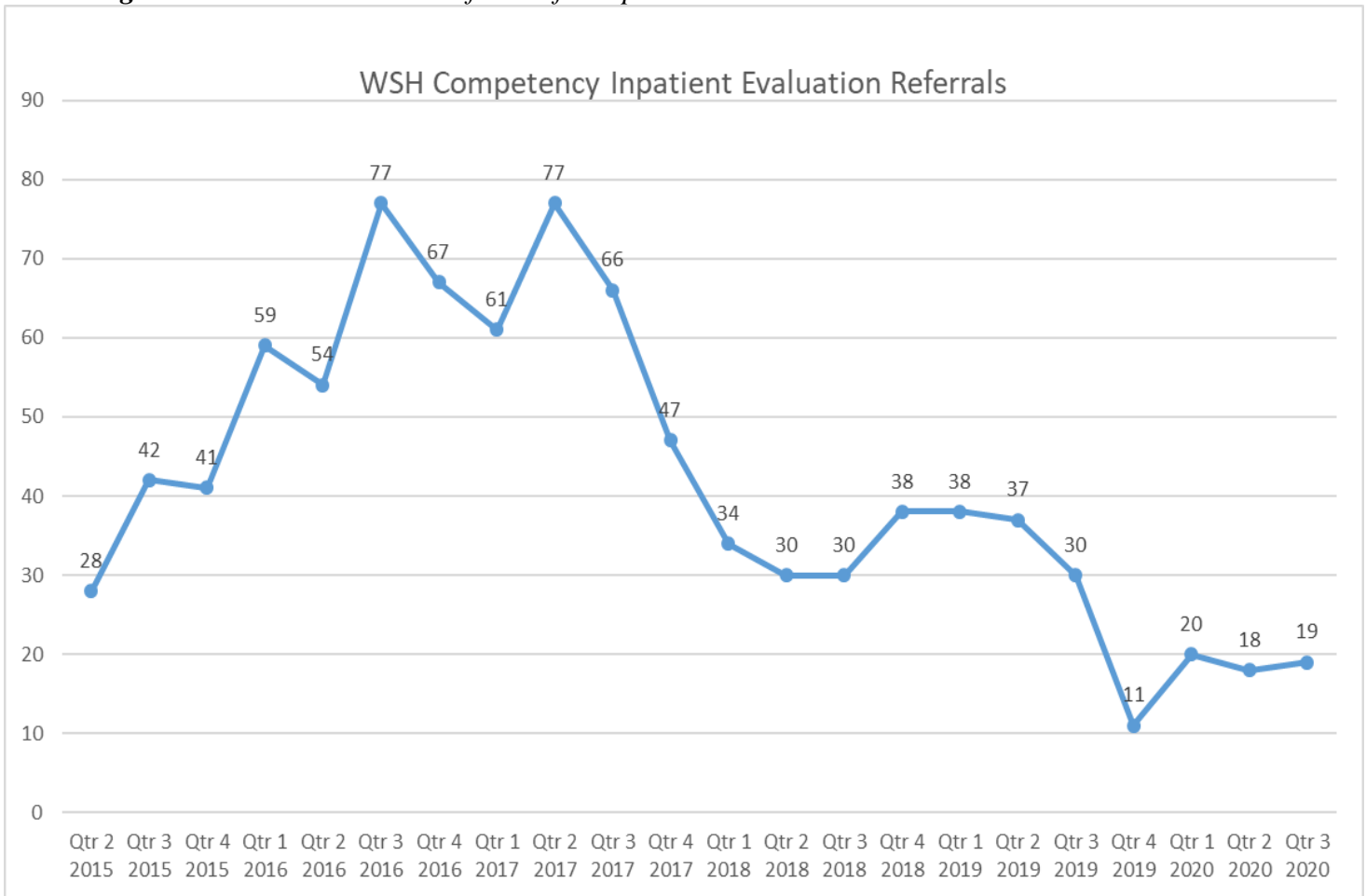
- **Figure 7.** This chart illustrates ESH total quarterly referrals for jail-based evaluations.
- **Outcomes:** During the Q2 reporting period, ESH’s Q2 jail-based referrals dropped by 49.3 percent. Typically, a quick, sharp drop in demand at ESH is followed by a return to the consistent long-term trend of relatively flat referrals punctuated by periodic spikes in demand. Q2 results suggest COVID-19 has a primary impact on the sharp drop in Q2 referrals. Q3 results indicate another period of relatively flat referrals punctuated by sharp demand spikes could set up again. Q4 data would begin to tell this story in the data in a more robust manner.
- **Drivers:** While the overall trend of increasing referral totals is driven by systemic demand, the immediate sustained decrease in demand seen in Q1 and Q2 2020 is a result of the arrival of the COVID-19 pandemic in March and its ongoing impacts to the behavioral health and criminal court systems. As the department has increased capacity and gained efficiencies in its processes, the criminal court system and mental health community have demanded the department’s services at a pace that has outstripped gains made in capacity and efficiencies. Q3 referrals returned to near normal but still persist a bit below likely non-pandemic demand levels.

**Figure 8.** Shows Total WSH and ESH Combined Referrals for Jail-Based Evaluations



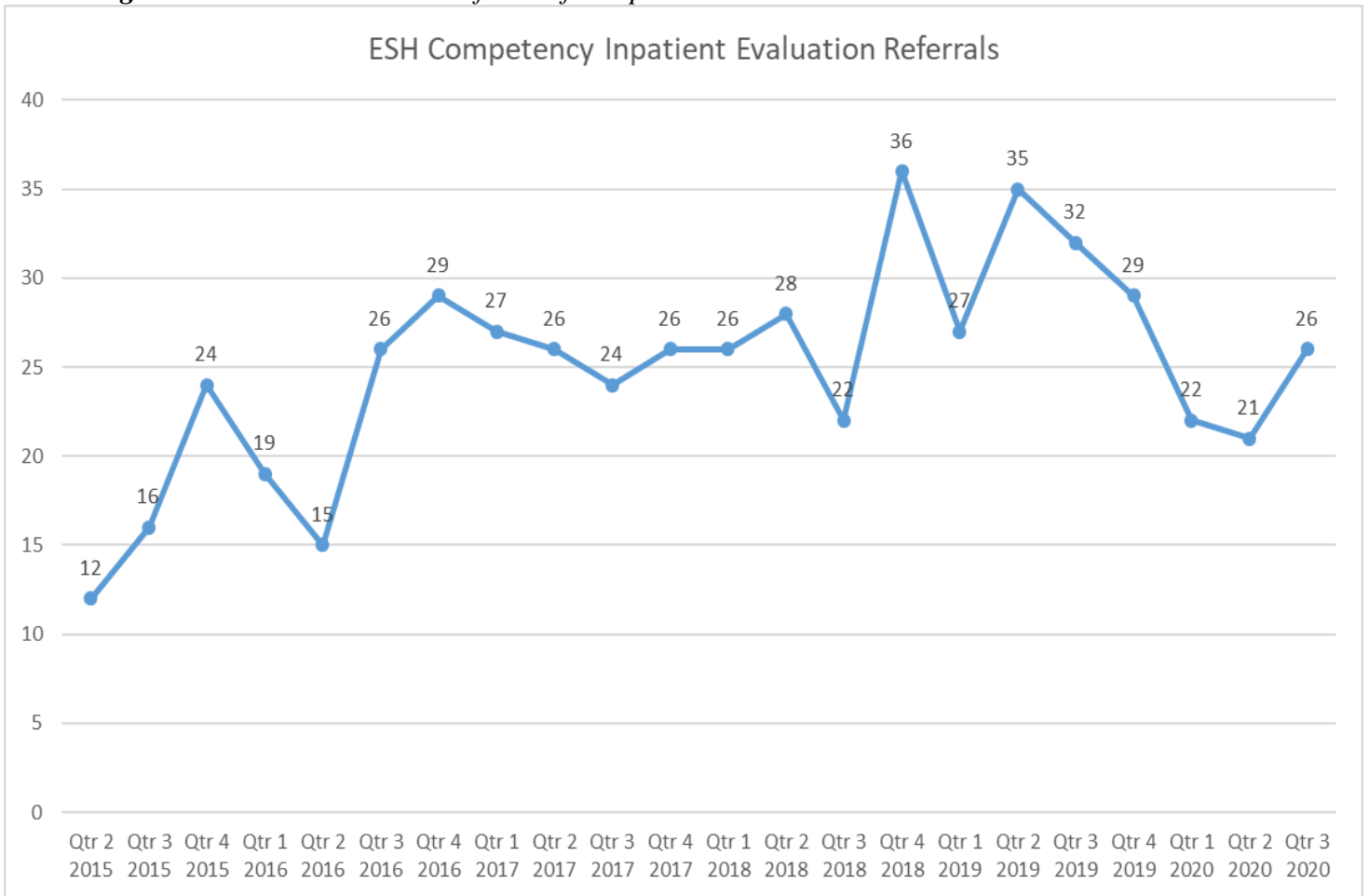
- **Figure 8.** This chart illustrates the combined total quarterly referrals for jail-based evaluations.
- **Outcomes:** During the Q3 reporting period, there was a substantial recovery in total referrals for both hospitals combined as compared with the previous two quarter’s declines.
- **Drivers:** The combined number of jail-based referrals to the hospitals, again, strongly suggests a “build it and they will come” effect; improved efficiency in providing consumers with a highly valued forensic service has itself increased the demand for that service. Likewise, societal trends suggest a growing population of persons who could benefit from mental health services; thus, it is likely that both pent up and increasing demand are adding strain to our systems, and over these periods of significant growth in referrals, periodic plateaus or even small decreases in demand occur regularly prior to the next surge in referrals. Beginning in February 2020 and continuing, the emergence of the COVID-19 pandemic led to the decrease in demand shown in Figure 8.

**Figure 9.** Shows Total WSH Referrals for Inpatient Evaluations



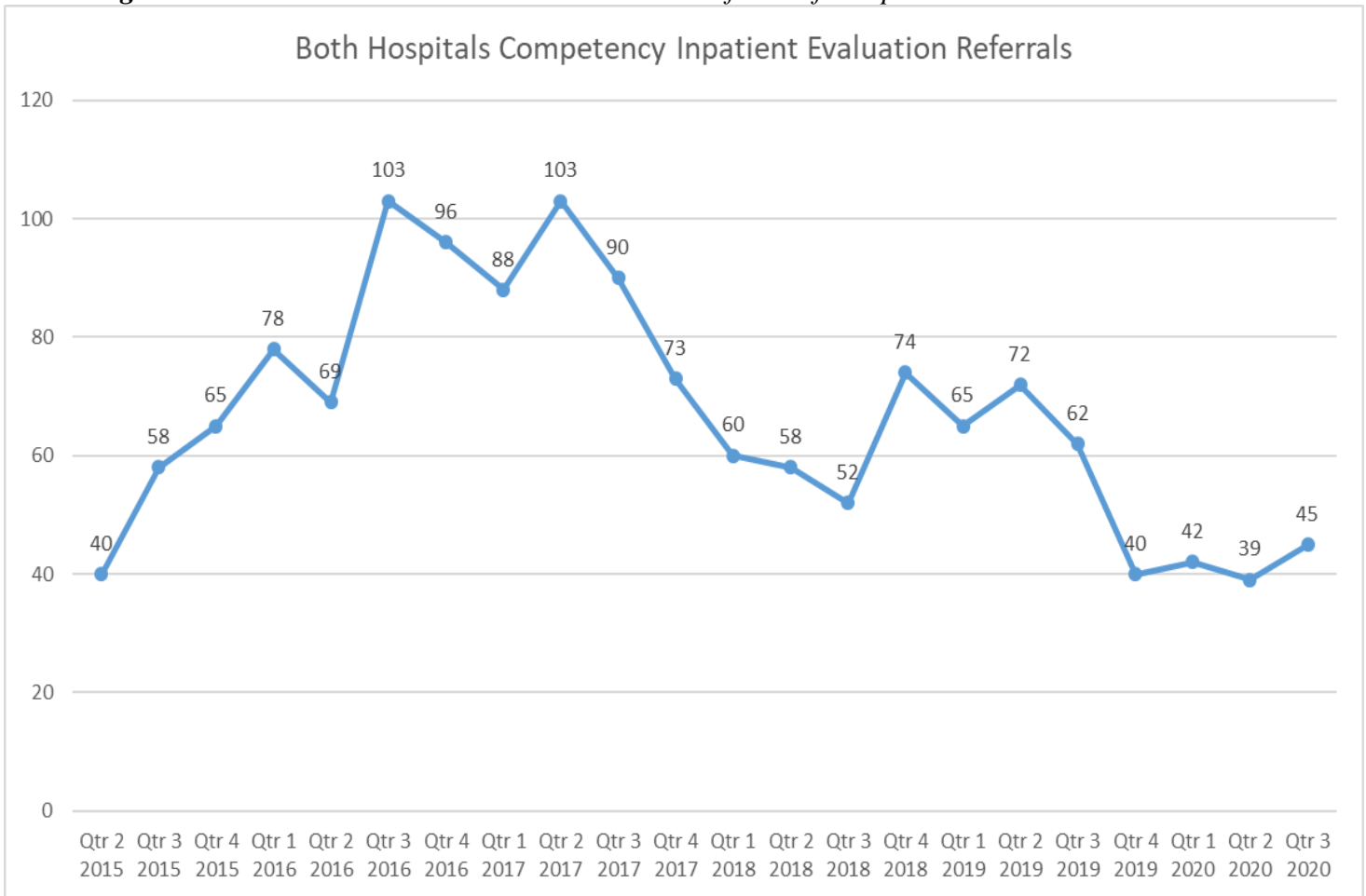
- **Figure 9.** This chart illustrates WSH total quarterly referrals for inpatient evaluations.
- **Outcomes:** During the Q3 2020 reporting period, referrals to WSH were flat as compared to the previous quarter.
- **Drivers:** The large decline in inpatient referrals seen from Q2 2017 through Q2 2018 may have been a rebound effect wherein courts had become aware of the fact that, previously, demand had outstripped capacity, which resulted in long wait times and completion times. Anecdotal information suggests that courts and defense attorneys are beginning to view the wait times for admission to the hospital for an inpatient evaluation to be so prohibitively long that it is not worth pursuing as an order for an inpatient evaluation. Some courts issued new orders that take the defendant off the inpatient wait list, directing DSHS to conduct the evaluation in the jail. In other cases, the defendant has waited for such an extended period for admission that defense counsel motions the court for dismissal of charges. Q4’s dramatic decline in referrals lends additional support to the above interpretations. Q1 rebounds from the floor in referrals created during Q4 2019, but due to the extremely small population size involved, the increase may be just an artifact in the data.

**Figure 10.** Shows Total ESH Referrals for Inpatient Evaluations



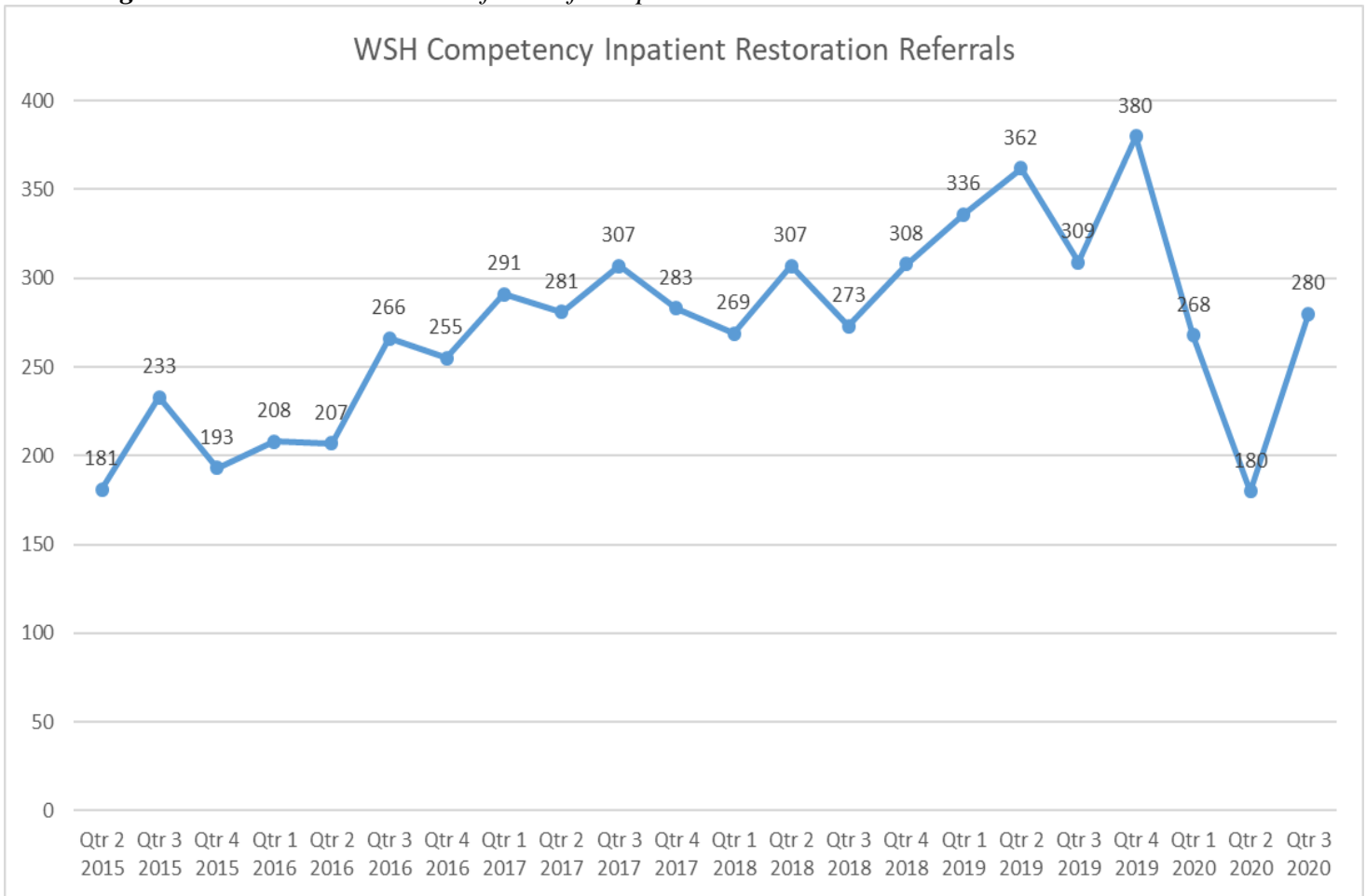
- **Figure 10.** This chart illustrates ESH total quarterly referrals for inpatient evaluations.
- **Outcomes:** During the reporting period, Q3 2020, ESH inpatient evaluation referrals increased 19.2 percent as compared to Q2.
- **Drivers:** The last four quarters are establishing a new trend starting at the upper end of the longer-term static trend that persisted from Q3 2016 through Q3 2018. The trend began with a brief 23 percent spike in demand during Q2 2019. The increase appears consistent with the longer term pattern of significant demand spikes followed by longer periods of flat to slightly decreased demand on a quarter-per-quarter basis. The current demand environment likely reflect the COVID-19 pandemic that began impacting hospital operations in February and have continued to do so through this quarter.

**Figure 11.** Shows Total WSH and ESH Combined Referrals for Inpatient Evaluations



- **Figure 11.** This chart illustrates the combined total quarterly referrals for inpatient evaluations.
- **Outcomes:** During the Q3 2020 reporting period, referrals for both hospitals combined increased modestly as compared with the previous three quarters, where referrals for both hospitals combined were essentially flat.
- **Drivers:** As illustrated in Figure 8, it appears as though an apparent preference by the courts and defense counsel, as it pertains to patient evaluations, to have the vast majority of competency evaluations completed in jail and in community settings as opposed to inpatient settings, may have continued in Q3 2020. Likewise, in response to the COVID-19 pandemic, criminal courts have allowed greater numbers of defendants to be released on PR while awaiting an evaluation. Court orders have flowed to the two hospitals in very different patterns over the last four years. ESH has grown interminably over this time with its referral load tripling before subsiding to 247 percent above Q2 2015 referral numbers just prior to the pandemic’s onset. WSH’s referrals grew rapidly, peaked twice, and then dropped by Q4 2019 to, on average, 61 percent below Q2 2015’s referral numbers just prior to the pandemic’s onset.

**Figure 12.** Shows Total WSH Referrals for Inpatient Restoration



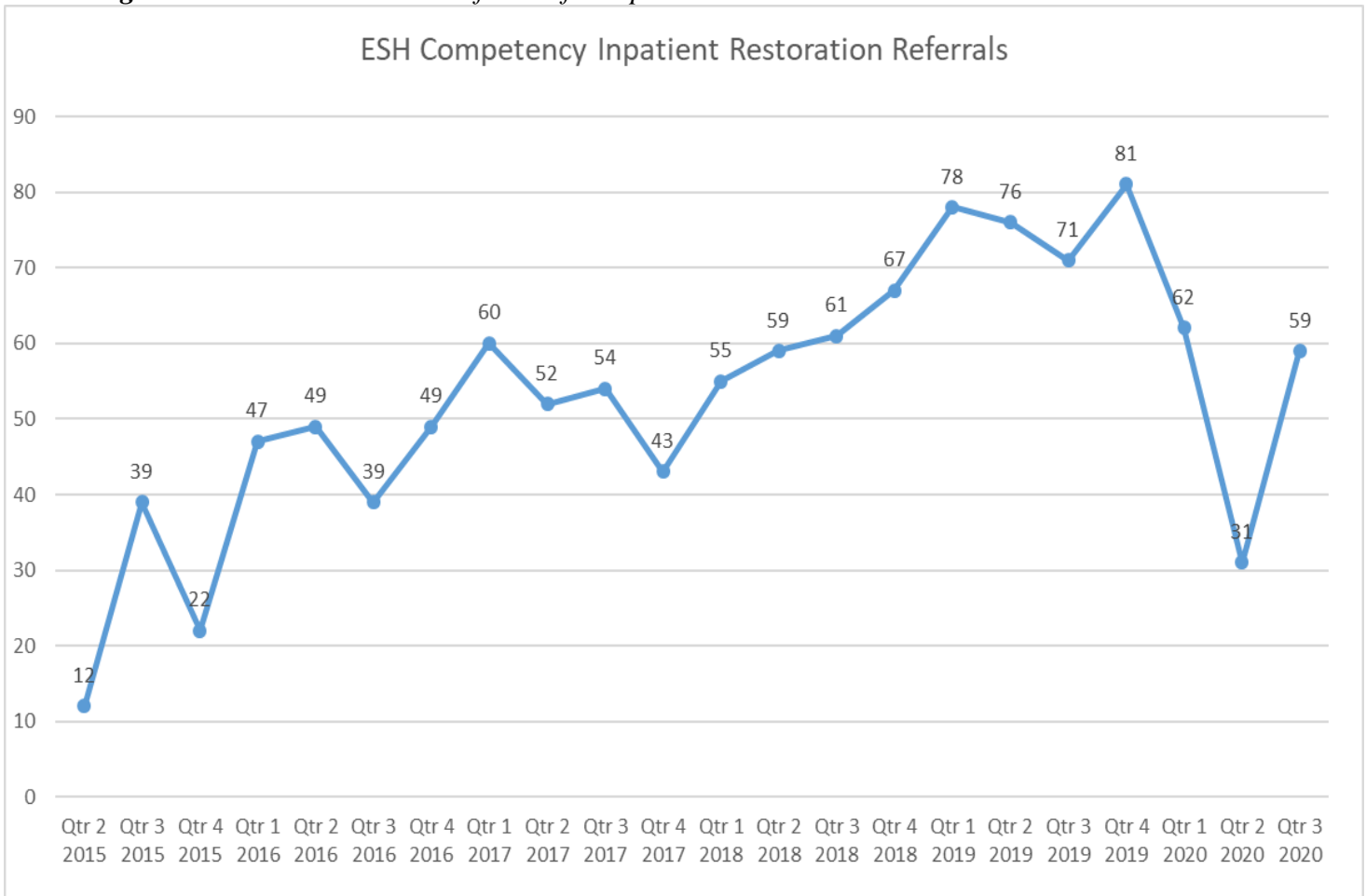
<sup>1</sup>WSH Competency Inpatient Restoration includes referrals that end up admitting to the RTFs.

- **Figure 12.** This chart illustrates WSH’s total quarterly referrals for inpatient restorations.
- **Outcomes:** During the Q3 2020 reporting period, referrals climbed by 36 percent overtaking the level at which Q1 2020’s restoration referrals settled after their 46 percent slide.
- **Drivers:** Having seen a sharp increase in referrals since the Trueblood decision, the relatively flat number of referrals over the previous ten quarters, ending in Q1 2019, suggested that supply (bed capacity) had a leveling effect on demand (referrals). After a significant rise in referrals in Q1 2019 and Q2 2019 only to see a reversion back to the longer-term demand trend in Q3 2019, it gives pause to consider whether the recent record-level demand was settling or if further significant increases in referrals can be expected. Q4 2019 provides an answer, at least in the short-term that persistent record-level referrals are ongoing, and then during the second half of Q1 2020, demand collapsed for inpatient restorations. This was indicative of the novel Coronavirus’ arrival in the United States in early 2020, the early emergence of western Washington as a hot spot for COVID-19

infections and sustained community spread, and the subsequent lead wave of pandemic restrictions that resulted in collapsed demand for inpatient restorations.

During the months of March through June, WSH had strict limitations on admissions hospital-wide or had wards with identified COVID-19 cases placed on admissions hold. Implementation of COVID-19 protocols, reductions in patient census on wards, temporary elimination of inter-institutional transfer, social distancing among clients and staff were among the measures implemented to manage the initial COVID-19 outbreak at WSH and other facilities. Criminal courts and other partners experienced pandemic-related court closures and reductions in court case throughput; and pandemic-related challenges in restoration program delivery. During Q3, referrals begin to recover as systems re-open and attempt to determine responsible paths forward to serving clients within the context of the COVID-19 pandemic.

**Figure 13.** Shows Total ESH Referrals for Inpatient Restoration

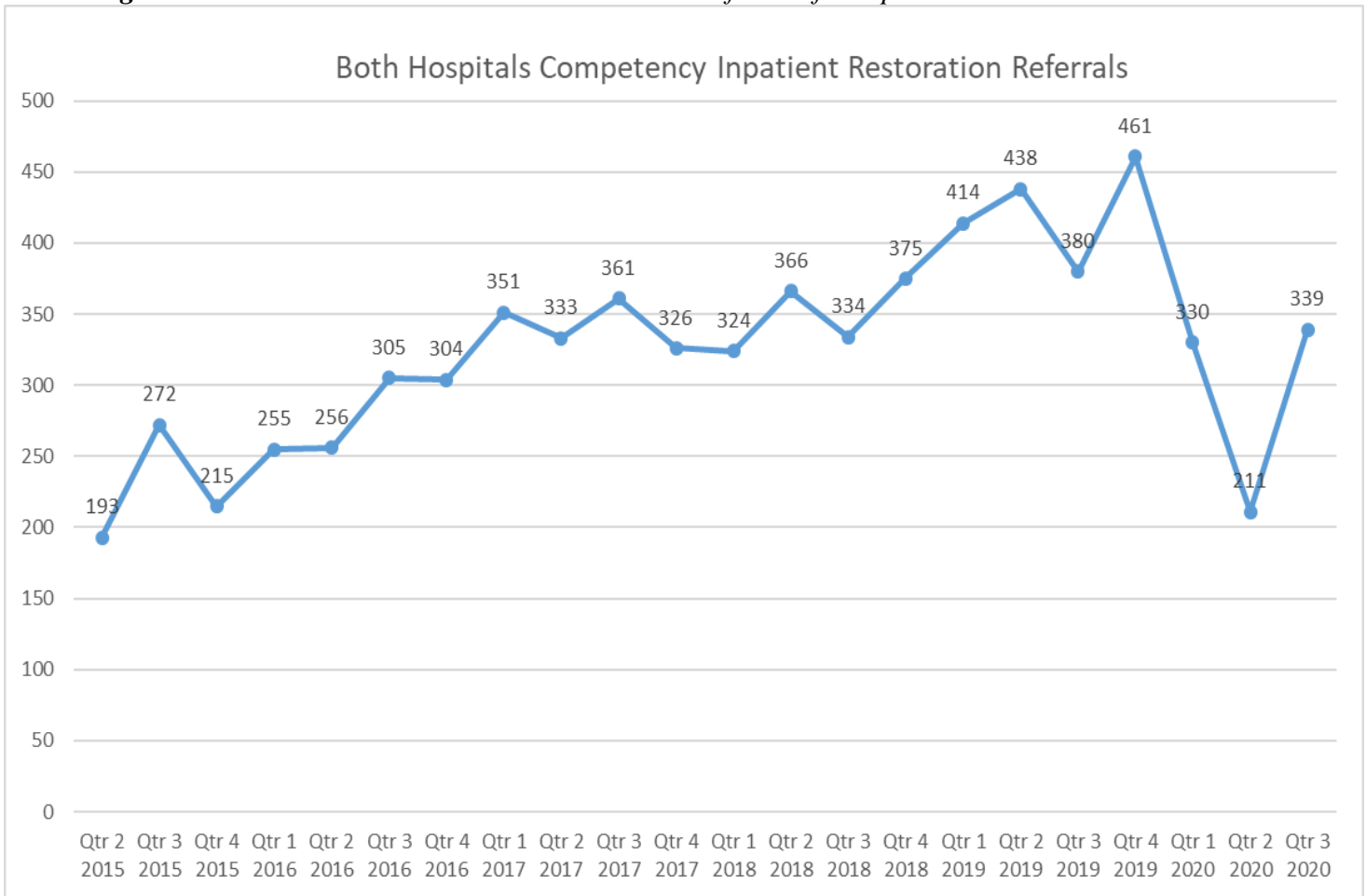


- **Figure 13.** This chart illustrates ESH total quarterly referrals for inpatient restorations.
- **Outcomes:** Q3 2020 referrals recovered to within five-percent of Q1 2020 referrals. From Q2 2015 through Q4 2019, just prior to the start of the pandemic, inpatient restoration referrals have skyrocketed 675 percent.
- **Drivers:** Restoration referrals represented in this figure increased significantly during Q4 2019 before dropping sharply in the Q1 2020 and Q2 2020 reporting periods. During the entire period covered by Figure 13, a clear upward trend line presents itself in the data showing sustained demand increases, occasionally punctuated by brief, sharp declines, that are outstripping capacity gains and adding strain to our systems.

During the latter portion of Q2, restrictions on admissions at WSH, due to COVID-19, along with 50 total new forensic beds coming online at ESH on June 1 and August 1 may have led to the Q3 spike in restoration referrals at ESH.



**Figure 14.** Shows Total WSH and ESH Combined Referrals for Inpatient Restorations



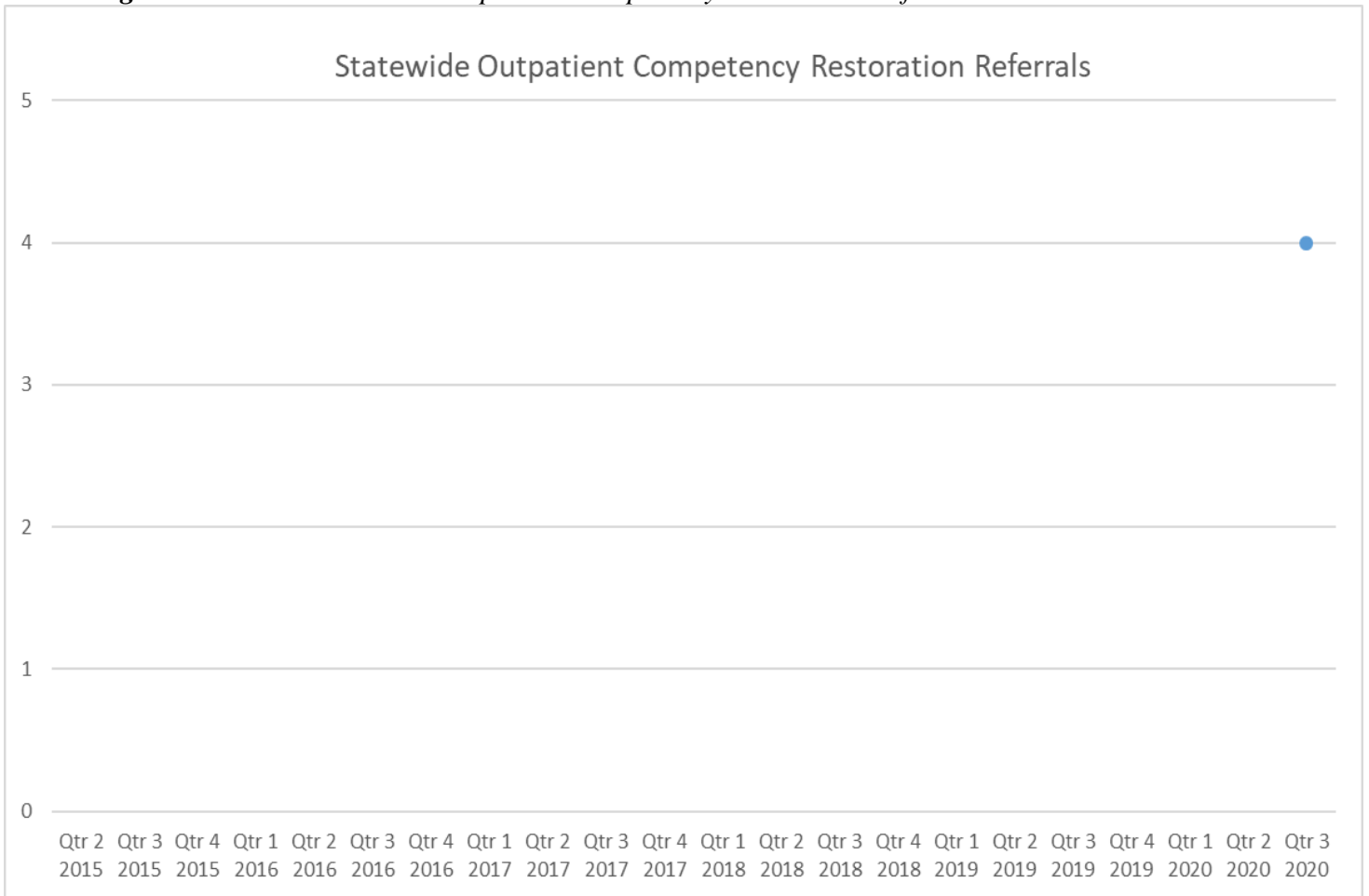
<sup>1</sup>Includes referrals that end up admitting to the RTFs.

- **Figure 14.** This chart illustrates the combined total quarterly referrals for inpatient restorations.
- **Outcomes:** During the Q3 2020 reporting period, WSH and ESH collectively saw referrals recover above the decline levels from Q1. The 2019 quarterly average for referrals is 424. The 2018 quarterly average was 349.75. The 2017 quarterly average was 342.75, and the 2016 quarterly average was 280. The growth in the year-over-year quarterly averages clearly illustrates that year-over-year numbers continue to climb dramatically and are significantly higher than was seen in 2016. After three quarters, the 2020 quarterly average is 293.33. With one quarter remaining in the year, a year-over-year decline in the average is all but certain for the first time.
- **Drivers:** After referral levels collapsed at both state hospitals during Q1 and Q2 2020 due to the onset of the global pandemic’s effects in Washington state, inpatient restoration referrals are beginning to recover. With few exceptions, as the department has increased capacity and gained efficiencies in its processes, the criminal court system and mental health community have demanded the department’s services at a greater pace. It is

likely that both pent up and increasing demand are adding strain to our systems. Adding the emergence of COVID-19 as a new externality, OFMHS and its partners are beginning to adjust to the new environment in which to safely serve our clients. Numerous pandemic-related changes include: implementation of social distancing in the forensic wards, in part, by reducing patient census; admissions holds on wards due to active COVID-19 cases among clients, staff, or both; slowdown in referrals due to pandemic-related court closures and reductions in court case throughput; and pandemic-related challenges in restoration program delivery.

On the following page, Figure 15 appears for the first time to illustrate referrals from the new OCRP program that began serving clients in seven Phase 1 counties on July 1, 2020 and began serving the last three Phase 1 counties on September 1, 2020.

**Figure 15.** Shows Statewide Outpatient Competency Restoration Referrals



- **Figure 15.** This chart illustrates the total number of Outpatient Competency Restoration referrals from all OCRP programs statewide.
- **Outcomes:** During the Q3 reporting period, Phase 1 OCR programs began serving clients. The first four referrals were accepted into OCRP during Q3.
- **Drivers:** Two OCRP programs opened on July 1, 2020, and the third program serving the Southwest region, opened on September 1, 2020. OCRP programs are in an initial ramp up phase as they begin to accept client referrals and provide treatment services. This opportunity is also utilized to test the program’s planned policies and practices under real world conditions. In response to feedback from within and without, administrators are working with stakeholders to implement needed adjustments.

## **ACTIONS TAKEN**

DSHS submitted a long-term plan to the Court in July 2015, which outlines DSHS' plans for coming into compliance with the timelines established in the Trueblood decision. On February 8, 2016, the Court issued an order modifying the original April 2, 2015 order, providing a new timeline requiring full compliance as of May 27, 2016. Pursuant to the Court's February 8, 2016 order, DSHS revised the long-term plan and submitted the revised plan to the Court on May 6, 2016. The long-term plan can be found at the following link:

<https://www.dshs.wa.gov/sites/default/files/BHSIA/FMHS/Trueblood/2016Trueblood/Combined-Long-Term-Plan-2016-05-06.pdf>

OFMHS is responsible for the leadership and management of Washington's forensic mental health care system and is addressing the increase in demand for mental health services for adults and youth in the criminal court system. OFMHS provides forensic evaluations, competency restoration, Not Guilty by Reason of Insanity (NGRI) treatment services, and liaison services to effectively coordinate efforts with system partners to meet shared goals. OFMHS additionally provides ongoing training and technical assistance to improve quality and timeliness of forensic mental health services, data management and resource allocation, training and certification of evaluators, and quality monitoring and reporting. OFMHS works in collaboration with the Governor's office to lead and implement robust diversion efforts to prevent citizens with mental illness from entering the criminal court system.

Significant public resources have been invested in providing the high quality and empirically supported services of OFMHS. Three major goals for OFMHS during this period were to (1) best-utilize current bed capacity; (2) gain efficiencies in the process of evaluation delivery; and (3) fund prosecutorial diversion programs and implementation of five RFP's using Trueblood fines. Below are the key actions that occurred during this period to decrease wait times.

### **Best-Utilize Current Bed Capacity**

During this period, a focus on keeping beds as full as possible was a continued key strategy, given the need to respond to probable and actual COVID-19 positive tests among patients and staff at the following facilities: ESH, WSH, Maple Lane, and Yakima. Maple Lane reduced census to 25, and Yakima reduced census to 21. Both facilities made these changes to allow for social distancing within the facility and to accommodate a quarantine room. Additionally, stabilizing the census remained a key focus at Ft. Steilacoom Competency Restoration Program (FSCRCP). FSCRCP experienced challenges with staffing during this reporting period, and even when fully staffed, FSCRCP will be limited to 25 patients due to COVID-19.

A needs projection and bed capacity study was completed during Q4 2018 with the TriWest Group, a consultancy organization, to determine the feasibility of and timeframe for compliance with court orders. The impact of community-based competency evaluation on the demand for inpatient competency evaluation and restoration beds were measured by TriWest Group. Results of this

study were unable to identify any correlation (e.g., homelessness, arrest rates, etc.) to the increases in referrals.

The Community Liaison and Diversion Specialist continues OFMHS' efforts in reducing demand for beds by working with community stakeholders to find and utilize available resources outside the criminal court system that will meet the needs of this population while fulfilling OFMHS' requirements under Trueblood.

Triage services have continued in an effort to identify individuals for whom expedited admissions may be appropriate. To date this program, called TCEA (Triage Consultation and Expedited Admissions), has identified and accepted requests for 273 individuals for expedited admissions, out of a total of 458 individual referrals.

While work to reduce inpatient demand for services continues, important capacity additions recently came online and others are in the latter stages of construction. Twenty-five bed forensic ward 1N3 opened on June 1, 2020 at ESH, and a second 25-bed ward, 3N3, opened on August 3, during this reporting period. At WSH, two 20-bed wards remain under construction. The WSH projects, in particular, have been delayed due to the effects of COVID-19 on contractors, labor, and the supply chain. The projects remain high priority and every effort is being made to mitigate the effects of the pandemic-caused disruptions. At this time, clients are expected in the WSH wards during Q1 2021.

A team of nine forensic navigators was hired in winter and spring 2020 and deployed to our 10 Phase 1 counties to begin serving clients on July 1. Navigators are developing strong relationships with our court and outpatient restoration partners and are already making key differences in client-centered problem solving and connecting clients to needed resources. Navigators partner closely with the newly implemented Outpatient Competency Restoration Program (OCRP), which was also implemented on July 1, 2020 in partnership with the Health Care Authority. As those outpatient treatment slots come online to serve appropriate clients in their own communities, on an outpatient basis, less pressure should be exerted on inpatient beds over time.

Work will need to be undertaken to continue increasing capacity and reducing demand. Actions are anticipated to take place in the next reporting period to address these challenges, which will be included in the next report.

### **Gain Efficiencies in Process of Evaluation Delivery**

During the 2015-2017 biennium, 21 evaluators were added to current staff levels. The legislature funded 13 new evaluator positions to begin after July 1, 2019 to further assist with competency evaluations to work toward substantial compliance and to meet statutory targets. As of June 1, 2020, all 13 forensic evaluators have been hired and started work for Fiscal Year 2020. For Fiscal Year 2021, beginning on July 1, 2020, the legislature funded five new evaluator positions. The department has already hired all evaluators for the Fiscal Year 2021 contempt settlement agreement requirements.

Many courts maintain requirements that forensic reports and other related motions be transmitted to the court clerk via fax. Outside of normal business hours or when forensic evaluators work from remote locations, they do not always have access to traditional fax machines. E-faxing utilizes secure servers to transmit documents from anywhere you can connect to the network to a receiving fax machine. For minimal investment, the project increases the number of forensic reports submitted on time, improving workload efficiency and decreasing fine payments for late cases.

Additional efforts have also been made in the area of workforce development. Specifically, staff evaluators were offered training, with national experts in the field of competency evaluations, as a part of ongoing efforts to create and maintain the most highly trained and efficient staffing possible. Subsequent, to the conclusion of the video conferencing evaluation pilot project, use of tele-video services for evaluations continues at existing sites. More than 45 evaluations are typically completed each month, and fewer than 3.0 percent of attempts are refused by the client's attorney. Clients are rejecting approximately one percent of remote evaluation requests. For the first two years of video evaluations, it proved challenging to engage jails and other entities in adopting remote evaluations; however, with the COVID-19 pandemic, OFMHS' was prepared to quickly shift to and effectively utilize workforce development staff to assist jails and others in adopting the necessary technology to conduct video evaluations. From April to September 2020, utilization of video evaluations increased nearly five-fold.

## **Fund Prosecutorial Diversion Programs & RFP's Using Trueblood Fines**

Twelve state and Trueblood-fine funded programs continue to operate including: King County (BHO); Sunrise Services, Inc.; Comprehensive Health Care; Great Rivers (BHO); Kitsap Mental Health Services; Catholic Charities; Pierce County; Thurston-Mason Behavioral Health Organization; Pacific County (program focused on diversion of misdemeanors); Spokane County (program focused on diversion of misdemeanor and low-level felonies); Greater Columbia (program focused on diversion of misdemeanors); and King County (program focused on diversion of misdemeanors and low-level felonies).

These programs allow a prosecutor to use their discretion to dismiss a non-serious charge without prejudice if the issue of competency is raised. The intent of these programs is to divert misdemeanor and low-level felony defendants from incarceration and hospitalization into needed behavioral health treatment. All programs continued to operate during the pandemic in this quarter though services were reduced and modified to incorporate more technology (e.g., Zoom) into meeting with clients.

## **NEXT STEPS**

Future reports will provide continued progress reporting, with a focus on efforts made in four main areas as it relates to compliance: (1) expanding and best-utilizing bed capacity, (2) increasing throughput for inpatient services, (3) managing in-custody evaluations to reduce barriers so compliance can be reached, and (4) decreasing demand for competency services.

ESH opened both of its newly renovated forensic wards bringing an additional 50 forensic beds online. As these beds are increasingly occupied, subject to COVID-19 restrictions, pressure will be reduced on the existing system. WSH is also expecting to bring two newly renovated forensic wards online for an additional 40-beds. Due to COVID-19 related delays, WSH's new beds are now expected to begin treating clients during Q1 2021. These new beds will enable reductions in the client wait lists and quicker through put in the legal authorities assigned to those beds/wards.

The major focus for OFMHS in the future is to work on reducing demand for all competency services through implementation of the Trueblood contempt settlement agreement. The Forensic Navigator program launched July 1, 2020 and is connecting class members with an enhanced suite of services as they navigate the competency/restoration process. Outpatient Competency Restoration also launched on July 1 and is designed to work in concert with the Forensic Navigator program to educate the criminal courts and guide appropriate clients to needed services especially outpatient restoration – and away from inpatient beds in secure state facilities. As these programs gain additional time in operations, a broader level of information will become available in future quarterly reports.

Additionally, OFMHS has taken steps to create specific standards and expectations for staff evaluators, in adherence with our principles of being the most well-trained and efficient staff possible.

OFMHS attempts to accomplish these challenging settlement agreement goals in the context of the global COVID-19 pandemic that recently began ravaging Washington state causing us to temporarily shut down much of state and local government as well as a vast array of societal institutions. At the end of Q1, the effects on our operations were relatively muted, but as the lockdown continued into Q2, and then the highly modified treatment environments persisted into Q3, the effects have only deepened. OFMHS' staff has strived to continue advancing transformative solutions to the forensic system in a safety and patient-centered care environment, in spite of the challenges induced by the historic pandemic.



## **SUMMARY**

The department continues to work on what impacts can be made on these four levers: (1) increase, and best-utilize, bed capacity; (2) increase throughput for inpatient services (quicker turnover in hospitals); (3) manage in-custody evaluations to reduce barriers so compliance can be reached; and (4) decrease demand for competency services.

Ensuring that every bed is best-utilized to meet requirements under Trueblood, by maintaining efficient referral and admission practices, is a major key to OFMHS' work toward achieving compliance.

Continued triage and diversion efforts will also facilitate and improve these efforts by managing the inpatient portion of Trueblood class members, while also finding acceptable alternatives for those class members deemed suitable for these alternative options.

With the contempt settlement agreement in place, OFMHS continues to work with its partners at the Health Care Authority, the Criminal Justice Training Commission, the criminal court systems around the state, and others to implement and administer new programs.