

SOLVING THE COMPETENCY DILEMMA

Reducing Inappropriate Incarceration of
People with Mental Illness



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A problem bigger than legal competency

The *Trueblood* case:

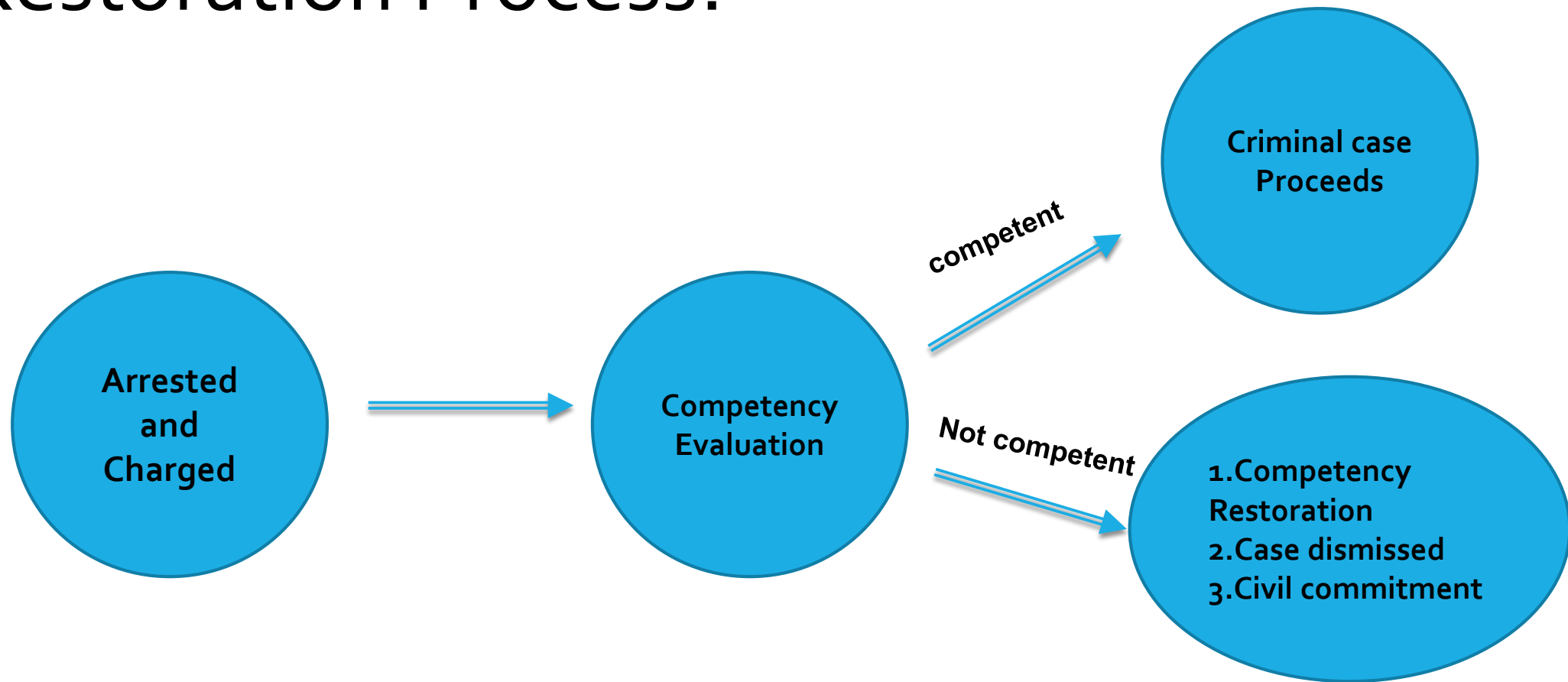
Someone is arrested, jailed, and has their competency to stand trial questioned. This person might spend weeks or months decompensating in jail waiting for a competency evaluation or restoration treatment.

The larger problem:

Someone is arrested and jailed for a crime that is often related to their mental illness. Legally competent or not, this person is put through a system that is inhumane, inappropriate, and ineffective in dealing with mental illness.



What is the Competency Evaluation and Restoration Process?



A.B. *by and through Trueblood et. al. v* Washington State DSHS

- 2014 Federal class action challenged unconstitutional delays for competency evaluation and restoration
- Class members are people *in jail* waiting for competency/restoration
- 2015 Court order
 - **14 days** for competency eval
 - **7 days** for restoration svcs



Who are our Class Members?



- **Disability:** Serious Mental Illness & Co-occurring Disorders.
- **Homeless:** 14.7%, but majority uncertain or unstable
- **White:** 77%, Black 20%, AIAN 2%, Hispanic 1%
- **Male:** 76%, Female 23%
- **Prior Competency Services:** 67.5% with 2-5 prior referrals
- **Prior Criminal Justice Involvement:** 69.9% with 2+ arrests





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2016: Contempt Fines

- Court found the state in contempt based on delays past 7 and 14 day timeframes.
- State has paid approximately **\$85 million** to the Federal Court Registry in fines. The vast majority of these fines are due to inpatient restoration waitlists.
- The court ordered contempt fines be used to fund **diversion programs** meant to prevent people from becoming class members.



Trueblood Contempt Fine Diversion Programs

- 11 programs statewide
- Funded for 18 months to 3 years
- Programs vary in approach:
 - Prevent arrest
 - Divert after jail booking
 - Release planning from jail
 - Stability in the community



2017: The Problem Continued

- Several years after the court order and millions of dollars in contempt fines, class members were still languishing in jail waiting for competency eval and restoration services.
- Between 2014 and 2017 in Washington, referrals for competency and restoration increased by 104%.



2018: Switching Tactics

- In 2018, the parties in Trueblood decided to work together to find creative solutions to the problem. A new settlement agreement.
- The state agreed to look at the problem more broadly. Not just adding restoration beds, but preventing the need for more beds.



New Settlement Agreement Elements

“The following are the key principals and strategic goals as developed and agreed to by the Parties.”

- Competency Evaluations
- Competency Restoration
- Crisis Triage and Diversion Supports
- Education and Training
- Workforce Development



1) Competency Evaluations

- Additional competency evaluators.
- New Forensic Data System to better predict and respond to demand.

2) Competency Restoration

- Changes in the law to reduce the amount of people ordered into competency restoration. (SB5444)
- Open additional restoration beds.
- Outpatient restoration programs.



3) Crisis Triage and Diversion Supports

- Expand criminal charges eligible for arrest diversion. (SB 5444)
- Increase availability of places to bring people for help in a crisis, not jail.
- Provide housing supports.
- Focus on “high utilizers.”
- Provide law enforcement with mental health professionals as co-responders.
- Expand Mobile Crisis Response.
- Create “forensic navigators.” (SB 5444)



4) Education and Workforce Development

- Expand behavioral health crisis training for law enforcement, corrections officers, and emergency dispatchers.
- Provide training and technical assistance to jails to better serve class members.
- Better use of peer specialists.
- Create training, certification, and other programs to encourage more people to work in needed fields.

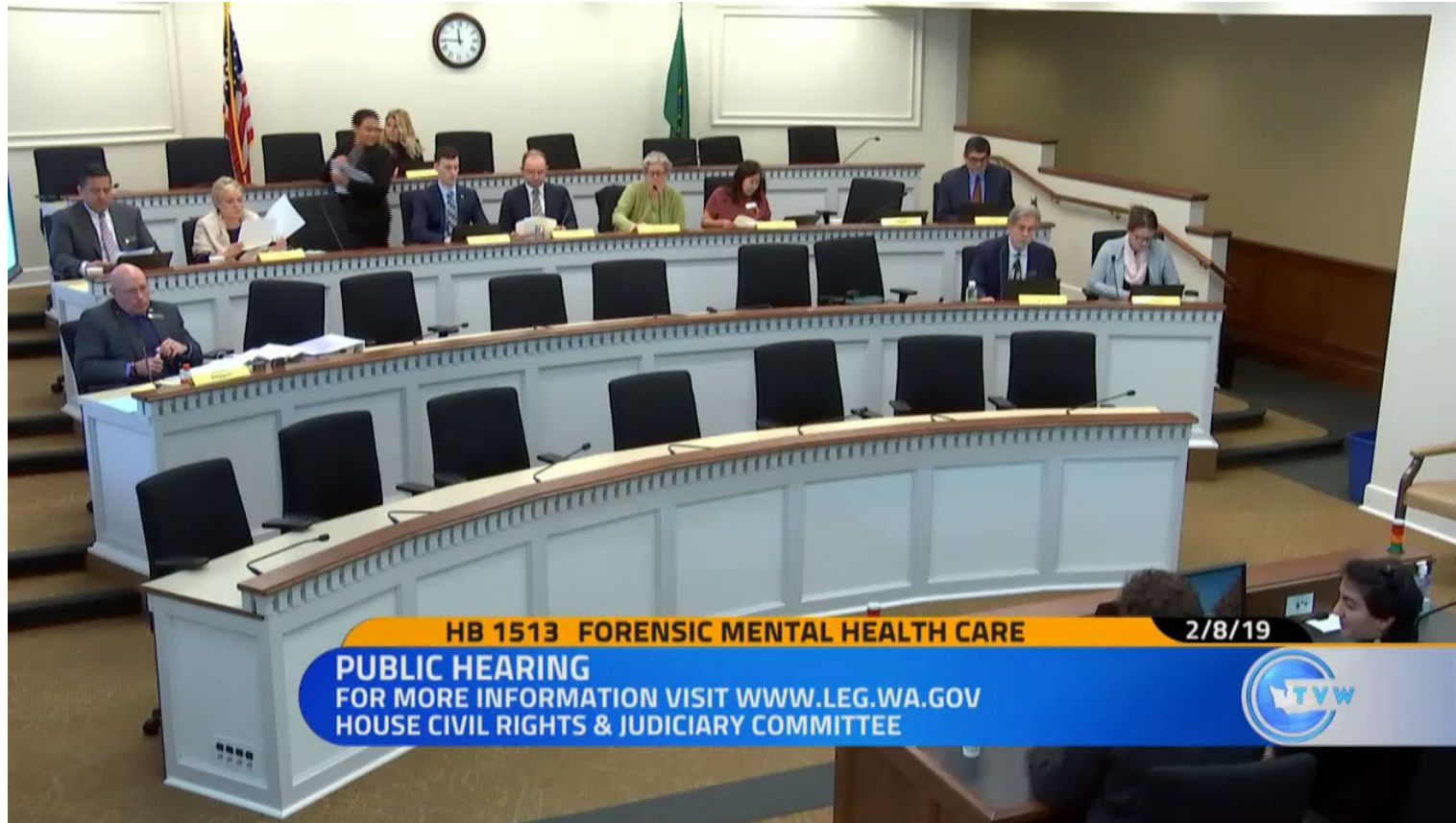


2019 and Beyond: Implementation of the Agreement

- Regional phased rollout through 2025, possibly beyond
- Legislative and budgetary efforts ongoing
- Contempt fines suspended for now



SB 5444/HB1513



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Continuing Community Input

- Implementation has two levels of oversight:
 - **Executive Advisory Council** Consists of the Parties—Makes recommendations to the programs and to the Court.
 - **General Advisory Council** A larger group that will provide input on how to roll programs out—Consisting of consumers and their families, judges, prosecutors and defense attorneys, law enforcement, and behavioral health providers.



THANK YOU!

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