

**Behavioral Health Administration – Mental Health
030 - M2 - RR - NON-FELONY DIVERSIONS**

Agency Submittal: 2015-17 Final 2017 Sup

Budget Period: 2015-17

SUMMARY

The Behavioral Health Administration (BHA) requests \$1,010,000 in GF-State to fund diversion projects that are not currently covered by Medicaid. In addition to the GF-State, BHA also requests 1.0 FTE \$132,000 GF-State to support the program. The additional GF-State will be used to develop programs based on recommendations approved by the Trueblood v DSHS Court, as well as recommendations put forth by Joplin Consulting. These recommendations will focus on keeping individuals out of the criminal justice system by providing community-based solutions prior to incarceration, and significantly reducing the amount of time individuals spend in jail by focusing on reentry solutions. These programs will promote trauma-informed care and recovery, minimize the risk of recidivism, enhance public safety, and increase the possibility that participants will engage in care and complete supervision and treatment requirements, thereby improving individual outcomes.

PROBLEM STATEMENT

High arrest and recidivism rates act as barriers to the recovery of individuals with behavioral health issues, and are costly and time consuming for law enforcement, jails and courts, and impact the perception of public safety. Among a sample size of Trueblood class members, in the year prior to the date the court order was signed for a competency evaluation, 92 percent of sample had at least one arrest, and 70 percent of the sample had at least two arrests. It is important to note, not all Trueblood class members are mentally ill. Of the individuals who suffer from behavioral health issues, particularly those charged with misdemeanor and low-level felony offenses, are not suited to criminal justice system involvement, and would be better served in outpatient behavioral health settings if more services were available to divert them to care rather than incarceration.

The Department of Social and Health Services (DSHS) anticipates the need for sustained diversion funding in the coming year(s) based on two demands. First, jail based competency evaluation referrals have continued to increase by 34 percent since the April 2015 Trueblood decision. As of October 2016, DSHS has not been able to reach compliance with the federal court order requiring in jail competency evaluations to occur within fourteen days of signing of the court order, and seven days for inpatient competency evaluation and restoration services. DSHS was recently found in contempt, remedial fines were established, and the contempt order required parties in the case to submit a Diversion Plan regarding the use of fines. Parties compiled data and information from state and national experts, stakeholder, and class members and submitted two recommendations for diversion options to the court. The parties are awaiting a response from the court on how to move forward with implementing the approved programming recommendations, which the court has ordered will be administered the Trueblood plaintiffs. As wait times decrease and fines decrease, the court-ordered diversion program administered by the Trueblood plaintiffs will run out of funding, and new funding will be needed for DSHS to continue diversion efforts that will reduce the demand for competency referrals. The reduction of these referrals is key to meeting the timeframes set forth by the court. Additionally, once the waitlist no



DSHS VISION

People are healthy • People are safe • People are supported • Taxpayer resources are guarded

DSHS MISSION

To transform lives

DSHS VALUES

Honesty and Integrity • Pursuit of Excellence • Open Communication • Diversity and Inclusion • Commitment to Service

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longer exists, the fines will cease and funding for the diversion program will end, which in turn will likely cause the waitlist to begin once again, a truly vicious cycle.

Second, Governor Inslee requested that the Office of Financial Management (OFM) contract with a consultant to study jail diversion opportunities for people with mental illness in Washington State. Joplin Consulting is in the process of reviewing Washington's current methods for diverting people with mental illness from the criminal justice system into community-based treatment and identifying promising jail diversion practices. It is anticipated to deliver a final report, which will include recommendations on how Washington can expand or improve its diversion practices in ways that are safe and appropriate for both individuals and the community, at the end of November 2016.

Competency referrals are a small subset of individuals both in jail and the community who are involved in the criminal justice system who have behavioral health needs. This increasing contact with the criminal justice system by individuals with unmet behavioral health needs and the increasing rate of behavioral health issues among the correctional population has created broad support for diversion resources across health, criminal justice and advocacy fields. There has been a consensus that a shift away from the reliance on incarceration to an emphasis on expanding capacity to supervise and treat individuals in their communities is necessary for the efficient delivery of behavioral health services, protection of defendant rights, and interests in public safety.

PROPOSED SOLUTION

Effective July 1, 2017, diversion programs throughout the state will be developed with the goal of reducing or eliminating the time that individuals with behavioral health needs spend in jail. This will occur through the effective training of stakeholders, improved jail transition planning, and availability of a broad service array. Medicaid funds would be leveraged and maximized where appropriate.

In order to implement the approved recommendations from the court and consultant's report, it is likely that the Office of Forensic Mental Health Services will initiate a competitive solicitation process to maximize resources. The addition of multiple diversion program throughout the state will require close monitoring, auditing, and reporting to multiple stakeholders. The OFMHS is requesting 1.0 FTE to manage this additional workload.

Programs will promote trauma informed care and recovery, minimize the risk of recidivism, enhance public safety and increase the possibility that participants will engage in care and complete supervision and treatment requirements thereby improving individual outcomes.

EXPECTED RESULTS

Services provided through diversion programs will:

- Prevent recidivism and frequent involvement with the criminal justice system.
- Reduce the demand for competency services and reduce the number of new users.
- Reduce long-term incarceration and involvement in the criminal justice system.
- Serve individuals in the least restrictive environment consistent with their needs.
- Increase timely service delivery and linkages.

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- Increase cross system collaboration among stakeholders in the forensic continuum system of care by expanding diversion options available to the criminal justice system.
- Reduce the costs associated with the incarceration and/or hospitalization of individuals with behavioral health issues in the criminal justice system.

STAKEHOLDER IMPACT

This proposal is expected to have support from Washington Association of Sheriffs & Police Chiefs (WASPC), Washington Association of Criminal Defense Lawyers (WACDL), Washington Defender Association (WDA), Association of Counties, Administrator of the Courts, Disability Rights Washington, American Civil Liberties Union (ACLU), Washington Association of Prosecuting Attorney's, the Behavioral Health Organizations, and providers of other services. There is no known opposition.

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OTHER CONNECTIONS

Performance Outcomes/Important Connections

1. Does this DP provide essential support to one or more of the Governor's Results Washington priorities?

Goal 4: Healthy and Safe Communities - Healthy People - 1.2.A.a -Increase percentage of mental health consumers receiving a service within 7 days after discharge from inpatient settings from 53.3 percent to 65 percent by 6-30-2017 .

2. The decision package meets the following DSHS' strategic objectives:

1.5: Provide timely and appropriate court-ordered competency to stand trial evaluation and restoration treatment service.

3. Identify other important connections or impacts below. (Indicate 'Yes' or 'No'. If 'Yes' identify the connections or impacts related to the proposal.)

- a) Regional/County impacts? Yes, Behavioral Health Organizations and courts will be impacted.
- b) Other local government impacts? Yes, law enforcement, jails and courts will be impacted.
- c) Tribal government impacts? Yes
- d) Other state agency impacts? Yes, Health Care Authority.
- e) Responds to specific task force, report, mandate or executive order? Yes, Joplin Consulting Washington Mental Health Diversion Study.
- f) Does request contain a compensation change or require changes to a Collective Bargaining Agreement? No
- g) Facility/workplace needs or impacts? New FTE will require new workstation.
- h) Capital budget impacts? No
- i) Is change required to existing statutes, rules or contracts? New contracts will need to be established.
- j) Is the request related to litigation? Yes, *Trueblood*.
- k) Is the request related to Puget Sound recovery? No
- l) Other important connections?

4. Please provide a detailed discussion of connections/impacts identified above.

By diverting individuals from incarceration and into community treatment, community mental health and substance use providers contracting with BHOs and counties will be impacted significantly. To effect systemic

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change along the forensic continuum of care, multiple system partners including but not limited to legal partners, law enforcement and jails, will need to invest resources.

The Office of Financial Management and the Governor's Office contracted with Joplin Consulting to study the status of jail diversion opportunities for individuals with mental illness in Washington State. Joplin will make recommendations on how best to reduce barriers and divert individuals with mental illness from the criminal justice system which will impact both BHA and HCA.

In April, 2015, *Trueblood v. DSHS* (Department of Social and Health Services) ruled that defendants may not be held for more than 7 days in jail in wait of a court-ordered competency evaluation. This standard was revised to 14 days in August of 2016 for jail evaluations, but remains at 7 days for inpatient evaluation orders. *Trueblood v. DSHS* also stipulated that when a defendant has been found not competent to stand trial, they may not wait longer than 7 days to be placed into treatment. DSHS continues to make rigorous efforts to meet the 7 and 14 day limits. These efforts include diverting defendants from competency services by providing appropriate behavioral health assessment and treatment in the community and in jails.

Alternatives/Consequences/Other

5. What alternatives were explored by the agency, and why was this alternative chosen?

One method of providing additional supports to this population is to incorporate them into the behavioral health organization rates. The difficulties with incorporating services into rates are as follows: limits flexibility of supports communities require to adequately address the needs of the target population by tying funding to Medicaid and Medicaid restrictions; BHOs receive too small of an allocation to have significant impact; does not take into account the number of non-felony competency referral orders generated by each county; limits the entities that can compete in a solicitation process.

6. How has or can the agency address the issue or need within its current appropriation level?

The administration doesn't have GF-State funding available to fully implement this program.

7. Does this decision package include funding for any IT-related costs (hardware, software, services, cloud-based services, contracts or IT staff)?

- No
- Yes (Include an IT Addendum)

Fiscal Detail**030 - M2 - RR - Non-Felony Diversions**

Operating Expenditures	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
001-1 General Fund-State	0	1,142,000	0	0
001-C General Fund-Medicaid	0	-1,010,000	0	0
Total Cost	0	132,000	0	0
Staffing	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
FTEs	0.0	1.0	0.0	0.0

Performance Measure Detail

		Incremental Changes			
Activity:		<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
Program: 030					
C900	Program Support - Mental Health	0	0	0	0
C069	Other Community Mental Health Services	0	0	0	0
No measures submitted for package					

Object Detail

		<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
A	Salaries and Wages	0	85,000	0	0
B	Employee Benefits	0	28,000	0	0
E	Goods and Other Services	0	6,000	0	0
G	Travel	0	4,000	0	0
J	Capital Outlays	0	6,000	0	0
TZ	Intra-agency Reimbursements	0	3,000	0	0
Total Objects		0	132,000	0	0

DSHS Source Detail**Overall Funding**

Operating Expenditures		<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
Fund 001-1, General Fund-State					
Sources Title					
0011	General Fund State	0	1,142,000	0	0
Total for Fund 001-1		0	1,142,000	0	0
Fund 001-C, General Fund-Medicaid					
Sources Title					
19TA	Title XIX Assistance (FMAP)	0	-1,010,000	0	0
Total for Fund 001-C		0	-1,010,000	0	0
Total Overall Funding		0	132,000	0	0

2017 Supplemental Budget
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Non-Felony Diversion funding
2017 Supplemental

Current Funding	FTE	FY17	FY18	FY19	FY20
GF-S		1,394,000	1,394,000	1,394,000	1,394,000
GF-F		1,010,000	1,010,000	1,010,000	1,010,000
Total		2,404,000	2,404,000	2,404,000	2,404,000

Funding Adjustment	FTE	FY17	FY18	FY19	FY20
GF-S		1,010,000	1,010,000	1,010,000	1,010,000
GF-F		(1,010,000)	(1,010,000)	(1,010,000)	(1,010,000)

FTE Costs	FTE	FY17	FY18	FY19	FY20
GF-S	1.0	132,000	126,000	126,000	126,000

TOTAL Request	FTE	FY17	FY18	FY19	FY20
GF-S	1.0	1,142,000	1,136,000	1,136,000	1,136,000
GF-F		(1,010,000)	(1,010,000)	(1,010,000)	(1,010,000)