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January 17, 2019

The Honorable Magistrate Judge John T. Rodgers
United States District Court
Eastern District of Washington
Thomas S. Foley United States Courthouse
920 West Riverside Avenue, Room 840
Spokane, WA 99201

RE: **Status report for *Ross v. Lashway* mediation**
No. 2:14-cv-00130-TOR

Magistrate Judge Rodgers,

This status report is being submitted in anticipation of the parties' fourth mediation session regarding implementation of the *Ross v. Lashway* settlement agreement. This status report contains four sections. The first section updates the overall progress that the Department has made since the parties' third mediation session on July 20, 2018. The second section sets out the settlement compliance plan presented at the last mediation and provides updates specific to each component. The third section contains data provided by the Department's Research and Data Analysis team. The fourth section addresses the Department's goals for the mediation.

In addition to the undersigned counsel, the following DSHS representatives will be present for the mediation on January 18, 2018: Behavioral Health Administration (BHA) Special Assistant Ken Taylor, Forensic Services Director Dr. Tom Kinlen, Forensic Services Quality Manager Dr. Bryan Zolnikov, Western State Hospital *Ross* Program Liaison Administrator Dr. Elizabeth Zinda, and Eastern State Hospital Administrative Director Dennis Wetzler.

I. PROGRESS TOWARDS SETTLEMENT COMPLIANCE

The following lists set out the Department's overall accomplishments since July 20, 2018, and also detail the hospital-specific successes that have taken place since that date. The Department believes that it has reached substantial compliance with the settlement at Eastern State Hospital (ESH), and that it is nearing substantial compliance at Western State Hospital

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(WSH). As these lists reflect, the Department has made substantial improvements to the NGRI treatment program beyond the requirements of the *Ross* settlement.

Program-level accomplishments

The Department has continued to make improvements consistent with the spirit of the *Ross* settlement. In addition to those described in the previous mediation report, this list of recent accomplishments includes:

- The Office of Forensic Mental Health Services (OFMHS) and BHA have provided leadership to implement the July 2018 compliance plan.
- The Department has increased the number of evaluators assigned to completing forensic risk assessments (FRAs). One full-time evaluator and one part-time intern have been added.
- DSHS's Research and Data Analysis team built a database for patient treatment updates with a user-friendly data entry form.
- BHA's Information Technology team began working on a solution to collect NGRI data that might include the tracker and patient treatment updates which may also allow the treatment teams to enter their data directly. This project is under development and may change.
- WSH's Quality Assurance (QA) Program has met with Dr. Zolnikov and developed the necessary definitions (e.g., how is an appropriate justification for grounds privileges defined) for auditing charts for compliance. The QA program utilized those definitions in their review of charts and will provide feedback to clinical discipline supervisors and the new Psychologist 4s. The discipline supervisors and Psychologist 4s will use this information to correct any deficiencies found by the QA audits.
- Dr. Zolnikov met with Dr. Zinda, Dennis Wetzler, and other clinical staff at WSH and ESH to develop improvements to the existing level system that place a heavy emphasis on levels being determined by substantial public safety risk rather than a simple categorization of levels derived from the Community Outpatient Treatment Readiness Evaluation Instrument (COTREI) system. The improvements were implemented as of January 15, 2019.
- Established the *Ross* Steering Committee, which meets twice a month and brings high-level partners into the *Ross* compliance effort. This committee has been instrumental in creating cultural change at the hospitals.
- Hired Dave Holt as WSH CEO, who has played a key role in changing the treatment culture at WSH.

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- Updated BHA Policy 5.2 to reflect more progressive movement of patients toward community living. This policy is in final review with BHA.
- Updated the NGRI patient treatment update form and merged it with COTREI form.
- Developed new legal forms for use by patients to apply to DSHS and/or petition to court for conditional or unconditional release. State hospitals are reviewing these forms, and will begin work in February on procedures for supporting patients in applying and petitioning, thereby promoting a culture of support for patient rights.

Eastern State Hospital accomplishments

Eastern State Hospital's list of recent accomplishments related to the *Ross* settlement includes:

- Hired Dennis A. Wetzler, LICSW, to serve as Forensic Services Unit Administrative Director effective August 16, 2018.
- Provided trainings to NGRI patients in August and December 2018 regarding the *State v. Fletcher*¹ decision, which held that NGRI patients may petition courts directly for release and that they are entitled to legal representation during that process. In September 2018, NGRI patients were provided with relevant sections of RCW 10.77 and BHA Policy 5.1, which outlines the patient application for discharge process.
- During October 2018, all NGRI patients were provided the contact name and number for either their attorney of record or the County Clerk's office of their adjudication. This helped ensure that patients could contact their attorney and begin the patient petitioning process if they wanted to do so.
- Hired chemical dependency professionals to provide group and individual counseling for patients. NGRI patients with substance use diagnosis/histories are now regularly referred to in-house CDPs and participate in patient-led Alcoholics Anonymous and Narcotics Anonymous groups.
- Beginning in August 2018, NGRI Management Meetings include a *Ross* Settlement educational component. Topics reviewed to date include the efficient use of forensic risk assessments, a review of the September 2018 audit results, and a review of hospital policy regarding searches for contraband in accordance with patient rights.
- NGRI patients have recently been enjoying an expansion of routes for escorted and unescorted grounds privileges.
- The NGRI Patient Handbook is currently under revision to include the goals of the *Ross* Settlement, a summary of *State v. Fletcher*² and a summary of the COTREI.

¹ 190 Wn. 2d 219, 412 P.3d 285 (2018).

² *Id.*

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- NGRI patients enjoyed the “Color Me Rad” walk in October 2018 and enjoyed a Winter Holiday Party with treatment team approved family and friends in the activity mall. A potato bar and refreshments were provided and patients had an opportunity to have pictures taken with family and friends.
- The FSU AD provided NGRI patients an opportunity to share their appreciation of NGRI staff. Several responses were shared at a December 2018 NGRI Management Meeting. This activity reinforced the critical importance of how patients appreciate being treated with respect and dignity.
- Beginning in November 2018, social workers and forensic therapists began facilitating secure escorted community outings with nursing staff. These outings are expected to become more frequent as of February 2019. NGRI patients have enjoyed visits to a local bakery, thrift stores and received library cards and internet training at the Medical Lake Library. Future outings will include updates of identification cards at the Department of Licensing in Spokane, Washington.
- Seven NGRI patients at ESH currently do not have privileges. The NGRI management team will discuss how to help these patients achieve eligibility for at least Escorted Grounds privileges. Hospital staff will discuss achieving the following goal for 2019: 95% of NGRI Patients with privileges by July 2019 and 100% by December 2019.

Western State Hospital accomplishments

Western State Hospital’s list of recent accomplishments related to the *Ross* settlement includes:

- Significantly increased grounds privileges for WSH patients in December 2018. Currently, 35 patients have escorted quadrangle time twice per week, and 32 patients have unescorted quadrangle time twice per week and escorted boundary walks 1-2 times per week. An additional outing will be added with the spring time change. Patients exit the building for grounds privileges through the main sally port that our employees use and exit the building through the main doorway to access the recreation van. A security vehicle no longer follows the patients to the civil quadrangle. Patients with new grounds privileges report how much they enjoy the outdoor time and going to a café. A patient with a love of books enjoyed the change from formerly calling the librarian to order books, to now going to the library and meeting the librarian in person and picking up his books himself.
- Moved most patients at level 3 and above to wards S10 and S4 for easier access to grounds privileges. Some level 2B patients have also been moved to S10.

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- Hired Dr. Elizabeth Zinda as the *Ross* Program Liaison Administrator. This position holds WSH accountable to the settlement, tracks relevant data, collaborates with the *Ross* implementation team, and provides quality assurance and improvement.
- Improved the incentive program that encourages WSH patients to more consistently engage in treatment and actively work to mitigate their risks. On Fridays, patients meet in the Activity Center with patients from other wards for a variety of activities and options for spending their incentive earnings, including library materials, movie rentals, café treats, computer center, ordering items, the fashion center, arts, and group movie time.
- Meetings for case consults are held as needed for treatment teams to discuss NGRI patients who are not moving forward in the program. These consults consider prescribed medication, request medication consults, and provide the treatment team with strategies and interventions that may assist the patient to engage in their treatment and progress. Psychologist 4s will provide routine monitoring and consultation for all patients.
- Provided ongoing monthly trainings for NGRI clinicians to review and discuss their cases. The trainings discuss patient treatment barriers and ensuring *Ross* requirements are met. A special extended training is scheduled for January 16, 2019 to review settlement and policy requirements.
- As part of the QA audit, a review of every NGRI treatment plan was completed within the six wards in the CFS building to ensure that the treatment plan is aligned with the COTREI assessment and that the team is actively assisting the patients to recover and move toward community living.
- Supervisors review every NGRI update form prior to it being placed in the patient's chart to ensure that patients are being assessed for grounds privileges, assessed for conditional release and that the patient's next steps are clear and obtainable. This review will be taken up by the new Psychologist 4 hires.
- Utilizing the NGRI tracker database to track every patient level change, privilege change, every Risk Review Board (RRB) presentation, every patient's packet sent to the Public Safety Review Panel (PSRP), every letter received from the PSRP, every FRA requested and obtained, and the results of all court hearings. Additional data points regarding the patient treatment update form have been added to the tracker.
- Held an annual New Year's party for patients on January 9, 2019. Patients enjoyed playing Bingo with special prizes, refreshments, and mingling with patients from other wards. Lower-level patients were able to reconnect with community program patients, who shared their experiences of enjoying higher privileges. These conversations demonstrated mentorship and generated a sense of hope for the lower-level patients.

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II. THE DEPARTMENT'S COMPLIANCE PLAN

During the July 2018 mediation session, the Department presented a comprehensive plan to achieve and maintain compliance with the terms of the *Ross* settlement. The plan is reproduced below, along with an update on the progress made towards achieving each element.

Element No. 1: Strengthen Western State Hospital Leadership

The leadership system at Western State Hospital needs to promote a treatment culture more consistent with the *Ross* settlement. Individuals dedicated to this goal will be hired for existing leadership positions, and new leadership positions will be created that are designed to achieve compliance with the settlement.

Chief Executive Officer (CEO). The Department is dedicated to hiring a new CEO at WSH who has clear values for recovery-oriented patient care principles, staff accountability, and best practices in forensic psychiatric care. This position will drive culture change from the highest level of the organization and must possess the requisite skills and drive to initiate and implement an effective culture change process.

Update: Dave Holt accepted the permanent position of WSH Chief Executive Officer.

Center Director for Forensic Services. Similarly, the Department is committed to hiring a new Center Director that possesses specialized training and experience in forensic psychiatric care. A national level recruitment will be utilized in order to recruit from a wide array of potential well-qualified applicants. Going forward, this position will begin reporting directly to the Chief Medical Officer of WSH in order to have the highest level of responsibility for local support. This position will also have a dotted-line supervisory relationship to the Director of the OFMHS and the DSHS Medical Director. This will enable the Center Director to have a supervisory lineage to Washington State's experts in forensic mental health services and the highest medical authority in DSHS. This lineage will provide forensic-specific specialized support and will enable the Center Director to access the OFMHS executive team including the Quality Assurance Manager and the Workforce Development Administrator.

Update: Interviews have been conducted, with a plan to make an offer by the end of January.

NGRI program leadership staff (new positions). A culture change at WSH will require a new system of leaders embedded as closely as possible to where the work of the treatment team staff takes place, such as treatment team meetings, Risk Review Board meetings, and group therapy sessions. The function of this leadership staff will be to support staff in complying with the settlement. The new leadership staff will be highly trained in the psycholegal standards of NGRI commitment and forensic risk assessment, and will be responsible for monitoring the appropriateness of patient progress for a designated caseload of patients. These staff will

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encourage the appropriate facilitation of each patient's movement towards safe conditional release or release. They will also perform audits of all NGRI program structures including the treatment team process, Risk Review Board, and group therapies.

This new leadership system of clinical staff will include the most qualified staff under the Washington State Office of Financial Management's Classified Job Listing who can provide clinical oversight of the NGRI treatment system. The positions will be classified as Psychologist 4, and will be included within the system at a ratio of 1 staff to 30 patients. The positions will be potentiated either from existing Psychologist 4 vacancies at WSH or will be converted from vacancies from other job classifications. These positions will report to the Center Psychology Supervisor and be responsible for overseeing all aspects of the NGRI treatment program. WSH will write policy supporting their oversight of the NGRI program and include that WSH staff comply with audits and plans of correction written by the leadership staff or designee.

Interviews for these new leadership positions will begin as soon as possible, with hiring decisions anticipated to be made by December 2018. Once hired, staff will be trained and integrated into the WSH NGRI program and will begin performing the duties outlined above. Data will be reviewed to assess the effectiveness of their efforts, after which the results would be shared with Plaintiffs' counsel.

Update: Three of the six Psychologist 4 positions are filled. WSH's new Psychology Supervisor, Dr. Sutton, updated the position announcement to attract additional applicants. An additional applicant is scheduled to be interviewed on January 17, 2019. WSH will continue to recruit until all six positions are filled. Drs. Sutton and Zolnikov have provided *Ross*-related training to the new Psychologist 4s, who have exhibited a high degree of understanding of the settlement.

Element No. 2: Quality Assurance

The Quality Assurance program at WSH will engage to a high degree in an initial comprehensive review of all NGRI patient charts. A team of quality reviewers will be trained, a quality assurance plan will be developed, and the plan will be incorporated into daily work. The data derived from these chart audits will be submitted to the Department's Research and Development Administration (RDA) for tabulation and reporting trends and provided to the clinical leadership system staff noted above for direct follow through with staff and individual patients.

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Update: The WSH QA department has completed audits of treatment plans and treatment update forms on S10, S4, and F7. They will complete all audits by the end of February. F8 and F4 will be completed in January, and E1 will be completed in February. A feedback plan has been created in which QA sends completed audits to the CFS Director, supervisors, and Psychologist 4s to review with therapists. Psychologist 4s will provide guidance to therapists. Reports on the audits will be shared with CFS leadership for tracking progress and compliance.

A new NGRI patient treatment update form has been finalized, and WSH therapists were trained on December 4. Use of the form has begun at WSH. Dr. Zinda sent the form to ESH and OFMHS on January 4 for use by both hospitals.

Element No. 3: Patient Ombudsman

A new Patient Ombudsman position will be stationed at WSH and provide additional support for and oversight of the NGRI system at WSH and Eastern State Hospital. The position will be supervised by the Assistant Secretary of the Behavioral Health Administration, provide policy recommendations, and engage in routine case reviews of NGRI patients. This position will complement the clinical leadership and quality assurance system by routinely interfacing with clinical leaders and quality assurance staff with the purpose of making recommendations concerning policy and procedure that are informed by patients' legal rights. The person in this position would possess a law degree and have experience with advising agencies about policy but would not provide legal representation to NGRI patients or DSHS.

Update: The Patient Ombudsman position has been posted and six candidates have applied as of January 11, 2019. Interviews will be scheduled by February 8, 2019. If a quality candidate is selected, an offer will be made by February 22, 2019 with a targeted start date of April 1, 2019.

Element No. 4: Improve Access to Grounds Privileges at Western State Hospital

To ensure that NGRI patients have timely access to grounds privileges, the Department will create eight additional Institutional Counselor positions at WSH. These new positions will significantly increase the frequency that eligible NGRI patients will be able to utilize grounds privileges. Interviews for these positions will begin by September 2018.

Update: This element has effectively been completed. Eight Institutional Counselor positions were filled, although a subsequent vacancy occurred which should be filled by the end of February 2019. Patients newly eligible for quadrangle and boundary walks have been enjoying their new privileges since December 10, 2018.

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Element No. 5: Improve the Patient Petitioning Process

The Department is committed to supporting NGRI patients in the exercise of their rights under RCW Chapter 10.77. To that end, the patient petitioning process for conditional and unconditional release at each hospital will be reviewed and strengthened. New petitioning forms will be developed and implemented at both hospitals, along with corresponding guidance to staff in the form of new policies or operating procedures designed to ensure that patients know who their attorneys are and that courts are setting hearings as appropriate.

Update: A number of forms, including a patient application, court petition, and request for counsel form, have been completed in consultation with Mr. Biviano. BHA has updated its policies to incorporate hospital requirements regarding the forms. Hospital specific policies are in development. BHA has set a goal of February 2019 to roll out the new forms to patients.

Element No. 6: Continue Staff Trainings

Both state hospitals will offer recurring trainings for staff that emphasize the provision of patient care consistent with the *Ross* settlement. WSH has already been conducting monthly trainings for NGRI clinicians, and ESH has also begun similar workshops for their clinical staff.

Update: WSH continues to conduct monthly rounds and trainings with therapists. January's training at WSH for primary therapists was embedded within a larger training with Dr. Zolnikov and Dr. Sutton for the Psychologist 4s. The January training of WSH therapists included: (1) a review of the methods to assess public safety risk; (2) emphasis on creating appropriate nexus statements for public safety justification; and (3) a review of case vignettes. Throughout the training, Drs. Zolnikov and Sutton emphasized the new culture of prioritizing conditional release over protracted inpatient hospitalizations at the state hospital.

At ESH, staff are given recurring trainings regarding the *Ross* settlement. At the FSU Management Team meeting on November 16, 2018, the importance of finding creative and therapeutic ways to help the remaining ten patients that currently do not have escorted grounds privileges was emphasized.

Element No. 7: Simplify the Level System

As detailed in the "Level System Review" letter provided to Plaintiffs' counsel by Dr. Zolnikov on June 4, 2018, the Department will simplify the NGRI privilege level system at each state hospital.

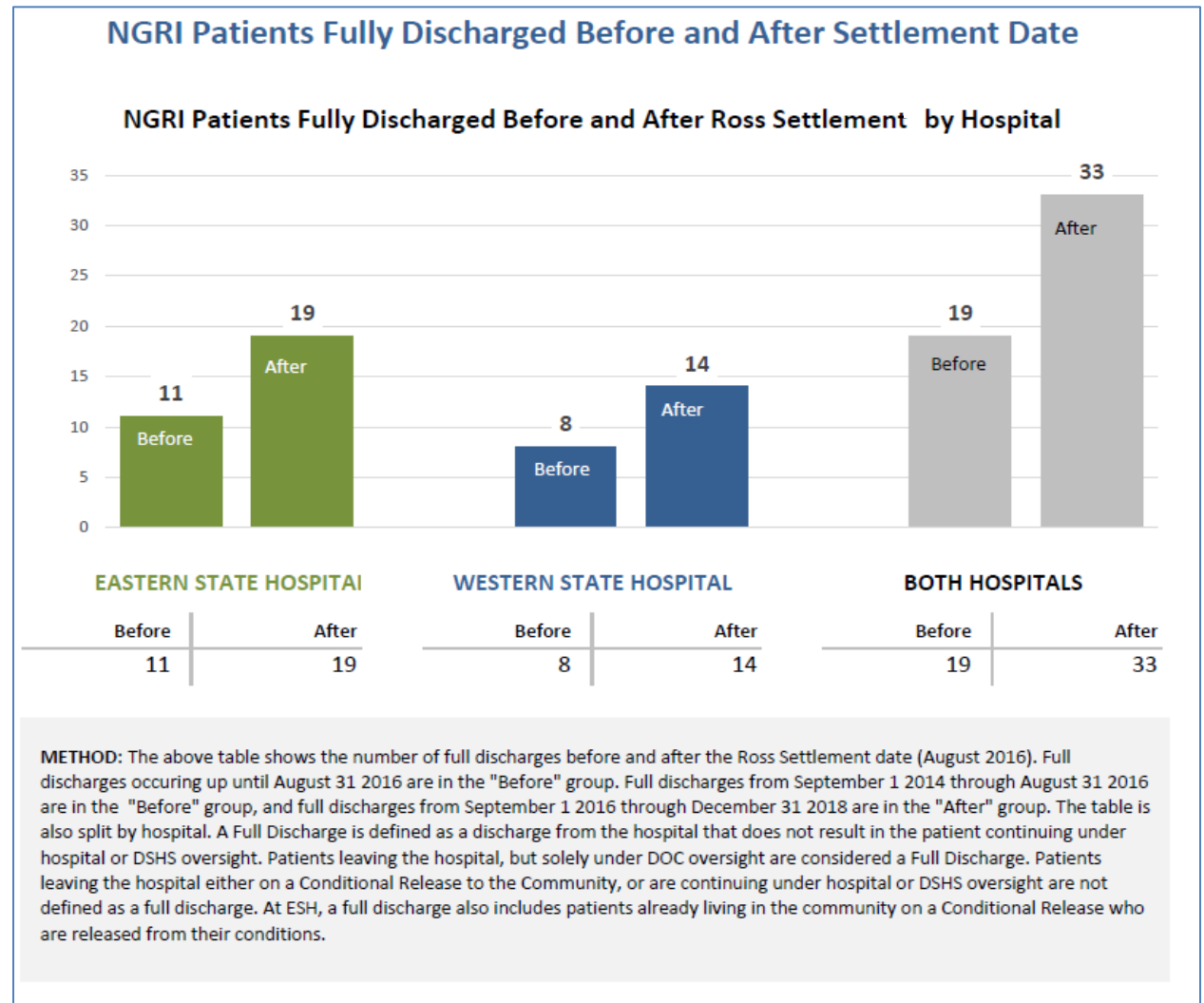
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Update: The simplified level system has been implemented, and through collaborative efforts between WSH, ESH, OFMHS, and AAGs, corresponding documentation has been finalized. The new level system increases the privileges available to patients at level 2B while eliminating the sublevels within levels 3 and 4.

III. RESEARCH AND DATA ANALYSIS TEAM DATA

The Department has prepared the following tables that help measure how its efforts are changing the treatment culture and producing more patient care successes. The data reflect that greater numbers of patients are receiving privileges and releases since the parties entered into the settlement agreement, and that more patients are receiving the FRAs necessary to be considered for more advanced privileges.



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Current Privileges by Hospital April - December 2018

Counts of NGRI Patient Privileges

April 2018 - December 2018

EASTERN STATE HOSPITAL									
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Privilege Type	NUMBER	NUMBER	NUMBER	NUMBER	NUMBER	NUMBER	NUMBER	NUMBER	NUMBER
Escorted Grounds Privileges ¹	41	42	53	55	55	55	55	51	49
Unescorted Grounds Privileges inside Civil Quad ¹	-	-	-	-	-	-	-	-	-
Escorted Grounds Privileges outside Civil Quad ¹	-	-	-	-	-	-	-	-	-
Unescorted Grounds Privileges (outside Civil Quad) ¹	4	7	25	12	5	9	9	12	12
Escorted Authorized Leave (AL) & Community Outings	1	5	10	7	7	7	7	7	10
Unescorted Authorized Leave (AL) & Community Outings	2	4	19	2	2	4	4	4	4
Conditional Releases to Community Living	22	22	24	25	23	22	23	23	21
Unique Patients Receiving a GP or CR	70	73	78	81	82	82	83	80	76
TOTAL	89	89	89	89	89	89	89	86	89

WESTERN STATE HOSPITAL									
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Privilege Type	NUMBER	NUMBER	NUMBER	NUMBER	NUMBER	NUMBER	NUMBER	NUMBER	NUMBER
Escorted Grounds Privileges ¹	27	30	37	34	34	36	30	39	53
Unescorted Grounds Privileges inside Civil Quad ¹	24	24	26	29	25	28	24	27	27
Escorted Grounds Privileges outside Civil Quad ¹	12	21	19	34	34	32	33	34	35
Unescorted Grounds Privileges (outside Civil Quad) ¹	0	-	16	11	10	13	11	16	19
Escorted Authorized Leave (AL) & Community Outings	1	1	7	6	5	4	9	12	11
Unescorted Authorized Leave (AL) & Community Outings	0	10	7	5	5	5	5	6	8
Conditional Releases to Community Living	51	52	56	56	56	55	55	54	55
Unique Patients Receiving a GP or CR	81	93	106	102	103	103	101	107	119
TOTAL	216	216	219	220	220	220	220	220	219

¹ Grounds Privileges are tracked differently between WSH and ESH. At WSH, grounds privileges include access to the Civil Quadrangle (ESH does not have a Civil Quadrangle). The WSH Civil Quadrangle is a secured, fenced area used for both escorted and unescorted grounds privileges, and the broader categories of "Escorted Grounds Privileges" and "Unescorted Grounds Privilege" are outside the Civil Quadrangle at WSH. At ESH, escorted and unescorted grounds privileges occur anywhere on campus outside of fenced areas, and "N/A" shows that the "Escorted/Unescorted Grounds Inside Fenced Quad" categories do not apply to ESH.

METHODS: This table provides the count and percentage of current privileges by privilege type, hospital and month (04/07/2018-12/10/2018). A Current Privilege is one that was reviewed and approved at all required levels (e.g. Treatment Team, Risk Review Board, Public Safety Review Panel, and courts), has been implemented/used by the patient at least once, and has not been permanently revoked. The **Number of Patients** receiving each privilege type and **Patients with any GP or CR** come from monthly "Average Privilege Implementation Wait-time" report. Patients may have multiple current privileges each month, and so may be included in more than one privilege type. **Total Number of NGRI Patients** comes from monthly "Highest Current Privilege" report. **Percent of Total Patients** is calculated by dividing the **Number of Patients** by the **Total Number of NGRI Patients** and multiplying by 100 to show the percentage.

SOURCES: Average Privilege Implementation Wait-time Report, April-December 2018; Highest Current Privilege Report, April-December 2018

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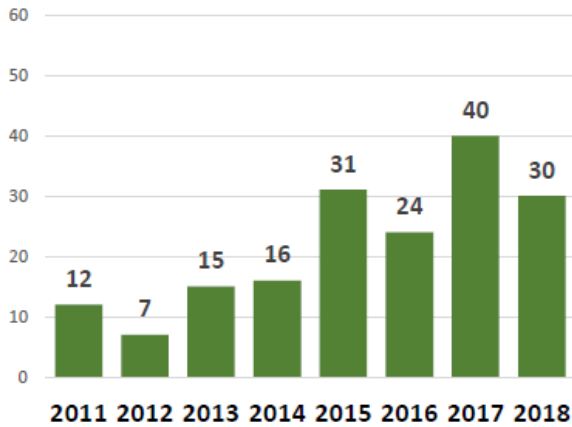
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Completed Forensic Risk Assessment (FRA) Referrals and Current Waitlist

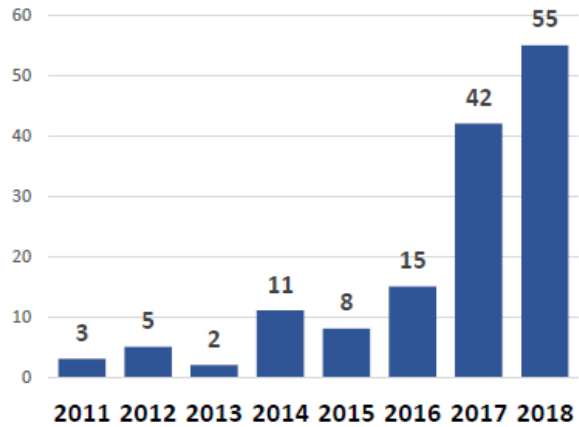
2011 through 2018

Number of FRA Referrals and Current FRA Waitlist by Hospital¹

EASTERN STATE HOSPITAL



WESTERN STATE HOSPITAL



Calendar Year	Number Completed
2011	12
2012	7
2013	15
2014	16
2015	31
2016	24
2017	40
2018	30

¹ Current Waitlist 13

Calendar Year	Number Completed
2011	3
2012	5
2013	2
2014	11
2015	8
2016	15
2017	42
2018	55

¹ Current Waitlist 31

¹ Current waitlist as of January 7, 2019 for ESH and WSH FRAs.

METHOD: WSH and ESH provided lists of referred and completed FRAs by year from 2011-2018, and provided their current waitlist count. Completed is the number of FRAs completed in the specified year.

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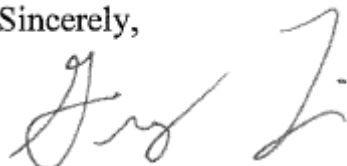
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IV. MEDIATION GOALS

The parties have worked diligently to improve NGRI patient care at the state hospitals in several respects. More patients are being considered for greater numbers of privileges, grounds privileges at WSH have been transformed, treatment planning has been significantly improved, a more efficient level system is in place, and more FRAs are being completed. As this report attests, these changes have combined to significantly improve the overall patient experience at the state hospitals. Because the compliance plan has not been fully implemented, more successes are expected at both hospitals over the course of 2019.

Several of these improvements have gone above and beyond what was originally contemplated in the settlement agreement; the Department has chosen to prioritize improving patient care over holding plaintiffs to their bargain. Given the Department's collegial, patient-focused approach to settlement implementation and its accomplishments made over the past year, the Department believes that the parties should devote time during the upcoming mediation session to discuss alternative, equally-collegial means for drawing this litigation to a close.

Sincerely,



GREGORY K. ZISER
ROBERT A. ANTANAITIS
Assistant Attorneys General