



January 25, 2023

Dear Governor Inslee, Senate Majority Leader Billig, House Speaker Jinkins, Senate Minority Leader Braun, and House Minority Leader Wilcox:

RE: Opposition to SB 5440, jail-based restoration

The signatories of this letter write to express our strong opposition to the inclusion of jail-based competency restoration in Senate Bill 5440. This bill presents many other significant changes to the competency restoration process that we are interested in discussing with legislators and stakeholders, but we cannot fully engage in those conversations as long as jail-based restoration remains in the bill.

1) Jail-based competency restoration violates the Trueblood Court Orders.

In 2015, the Federal Court in Trueblood found that state psychiatric hospitals are “an appropriate environment for mental health treatment” while jails are “inherently punitive.” Consistent with these findings, this Court ordered the state to provide inpatient competency restoration services in the **“therapeutic environment of a psychiatric hospital.”**

However, without the Court’s approval, in 2015 and 2016 the State invested millions to create two inpatient restoration programs in correctional settings: a jail in Yakima and former youth detention facility at Maple Lane. This resulted in months of additional litigation and several Restraining Orders that prevented the State from using these correctional facilities for restoration without significant financial investment to fix serious harms posed by the physical structure and operations. **The State’s insistence on using these jail settings for restoration was also one of the main issues cited by the Court when it found the State in contempt in July of 2016 and began imposing fines that now amount to over \$300 million.** In 2018, the State negotiated with Plaintiffs to finally close the programs by 2021 and 2024.

The State is currently facing a motion by the Plaintiffs in Trueblood to find them in material breach of the 2018 Settlement Agreement and in further contempt of the Court’s Orders, **which could result in the State being ordered to pay approximately \$250 million in accrued back fines and new future fines that may be as much as \$40 or \$50 million per month.** As the Court is considering this motion and fines, the question of the State’s intention to use jail space for competency restoration is again before the Court.

2) Jail-based restoration is harmful and a bad investment.

A handful of states have undertaken some form of jail-based restoration, but the programs vary widely in their design, efficacy, and outcomes. At the heart of these programs is a state’s decision to invest substantially in jails instead of building up mental health treatment facilities and services in the community, which has been Washington’s stated goal for years. **Jail-based restoration will worsen the problem of arrest and jail being seen as the fastest way to access treatment for people with serious behavioral health conditions.**

Washington should not make decisions about the care of its most vulnerable citizens based on the State’s claims that jail beds are the cheapest and most immediately available option. **Jails are a punitive setting not intended or able to provide treatment to very sick people—that is precisely why they may be cheaper than treatment facility beds.** Trueblood class members suffer immensely in jail and are more likely than not to end up homeless, destabilized and re-arrested shortly after their release.

3) There are better alternatives available.

The evidence is very clear from dozens of studies that to break the cycle of crisis and re-arrest, we must invest in housing and supports, not jail. Instead of a short-sighted investment in promoting jails as appropriate settings for behavioral health care, the State should invest in other spaces and services that serve Washington better in the longer-term. For example, the State could contract with other existing treatment facilities for inpatient restoration beds or utilize the empty wards at Western State Hospital.

The State also has begun operating Outpatient Competency Restoration Programs (OCRP) in a few regions, but these programs are small and provide minimal housing and supports. Instead of paying jails to use their cells as treatment space, the State could invest in OCRP to expand it to more regions and to provide better housing and treatment supports. This would make OCRP available to many more class members and reduce demand for inpatient beds. The State could make similar investments to expand and fortify the diversion programs it is rolling out under the Trueblood Settlement Agreement, which would also reduce demand for inpatient restoration beds by keeping class members stable in the community.

4) The legislature has already rejected jail-based restoration in favor of better options.

In 2015, the State passed into law SB 5177 which explicitly allowed for the State to contract with counties to provide jail-based restoration during the 2015-2017 biennium. Instead of renewing this for subsequent biennia, in 2019 the State struck this language from the statute as part of its reforms of the competency restoration system that included establishing OCRP and promoting diversion programs (SB 5444, 2019). In doing so, the legislature made a clear, correct choice to reject jail-based restoration in favor of better options.

We strongly urge you to remove jail-based restoration from SB 5440.

Sincerely,

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Cc: Chair Dhingra and Ranking Member Padden, Senate Law & Justice Committee
Chair Cleveland and Ranking Member Rivers, Senate Health & Long Term Care Committee
Chair Hansen and Ranking Member Walsh, House Civil Rights & Judiciary Committee
Chair Riccelli and Ranking Member Schmick, House Health Care & Wellness Committee
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