

Institutionalize Alternative Pathways to Treatment and Recovery and Improve Outcomes

ESSENTIAL ELEMENT 3: Competency Dockets

POLICY

There is growing consensus that because of the likelihood of an increased length of incarceration and confinement, the competency process should be reserved for defendants who are charged with serious crimes. Others, especially those charged with misdemeanors, should be diverted to treatment.

If the court is proceeding with competency evaluations, restoration, and trial, the court must, to the extent possible, manage the progress of the case to avoid an individual languishing in jail and decompensating at any point of the process. Creating specialized dockets that facilitate access to appropriate diversion and restoration resources for these complex cases is one approach to consider.

A competency docket seeks to combine and consolidate possible diversion and competency-related matters in one division or with one judge, oftentimes with a set docket time for a dedicated team to meet (i.e., prosecutor, defense counsel, treatment provider, et al., to meet with the judge and defendant).

EVIDENCE-BASED PRACTICES

Case Managers and Court Liaisons: Case managers and court liaisons can facilitate the pairing of defendants with evaluators, identify services that allow the diversion, evaluation and/or restoration processes to occur in the community instead of a custodial facility, and ensure appropriate attention is paid to timelines and resource coordination.

Centralized Calendars: No matter how often competency is raised in a jurisdiction, combining whatever cases there are leads to better addressing the nuances and complexity of these individuals and cases. Fluency in psychotropic medications, therapeutic alliance,

the DSM-5-TR, treatment resources and other systemic issues requires repetition and experience. Some jurisdictions create dockets only for evaluations, others to monitor the restoration process.

Frequent Reviews: Because of the impact that timeliness can have, frequent reviews at each stage are important. Frequent and meaningful court events can ensure predictability and the accountability of the many criminal justice, behavioral health, state, and local entities involved. Court reviews ensure accountability of all entities involved in these complex cases.

Court Case Management Teams: Competency teams – judge, prosecutor, defense counsel, navigators, et al. – provide the necessary proficiency to ensure the individual is not warehoused at any stage of the proceeding. A team approach also makes scheduling easier and more productive. Developing the trust among team members is another essential component of the team approach.

Attention to Racial and Ethnic Fairness: All courts must pay attention to the racial and ethnic makeup of evaluators, restoration providers, and court case management teams to promote trust and confidence in the processes. Data should be added and tracked by all courts.

GETTING STARTED

Convene those involved in the competency evaluation and restoration processes and identify gaps and opportunities to improve the processes. This may involve both state and local level convenings.

Consider prosecutors, defense counsel, case managers, liaisons, behavioral health providers, jail administrators, pretrial service officers, evaluators, community and state hospital

restoration providers, and others. Oftentimes, state level associations of these members are required to lead change.

Map the current competency processes and identify improvements such as triaging individuals at each point for diversion, dismissal, or civil opportunities. Consider all strategies to expedite proceedings.

Develop Memoranda of Understanding (MOUs) to document effective processes and establish consistent protocols and expectations.

In addition to the team approach, a broader stakeholder group can ensure that all resources and opportunities are being explored.

While it is recommended that courts and communities “just get started” managing competency related processes, oftentimes, a court case manager or coordinator can facilitate the process.

Maintaining and sharing data about each stage of the proceedings is essential.

ROLES AND RESPONSIBILITIES

The current behavioral health and justice systems are structured and operated the way that they are as the result of innumerable practical, fiscal, policy, and political reasons, and there is enormous inertia in complex and diverse systems such as these. Whole system change – especially change that is institutionalized – is difficult and requires forward thinking leadership from each partner entity. Overlaying a comprehensive pathways approach on these disparate entities requires enormous coordination by law enforcement, crisis response systems, jails, prosecutors, defense counsel, community supervision providers, courts, and treatment providers at each level. Every one of those partners, and more, have a role to play; from law enforcement embracing deflection, to jails implementing universal screening, to judges and lawyers ensuring the use of evidence-based practices. Data sharing is also critical – of clinical and criminal justice histories, screening and assessment results, treatment and supervision compliance, and

a host of other data. Decision making should be informed and supported by this data. To coordinate and integrate these significant and systemic reforms requires leadership and perhaps a measure of institutional humility.

NEXT GENERATION

Innovation, Technology, New Practice

The most effective approach to addressing delays and deficiencies in the competency to stand trial system is diverting cases from the criminal justice system whether prearrest or post arrest. States are beginning to restrict which cases are referred for competency, by rule or by statute. Several jurisdictions currently prohibit the use of the restoration process for certain classes of pretrial detainees.

Oregon has developed a [data dashboard](#). The dashboard is primarily a way for the Oregon Judicial Department (OJD) and individual courts to track changes in aid and assist caseloads and work with system partners to identify areas for improvement and system change at the state and local level.

Institutionalization, Sustainability, Funding

Diversion from the criminal justice system of individuals in mental health crisis or with serious mental illness works much better for the individual as well as the community and uses limited resources and available dollars more wisely. All states must consider community evaluation and telehealth processes as well as community restoration sites. Rational timelines should be established both statewide and community by community resulting in better outcomes and less cost.

RESOURCES

[Leading Reform Competence to Stand Trial](#)

[OR-Aid-and-Assist-Dashboard](#)

[Just and Well: Rethinking How States Approach Competency to Stand Trial](#)

[Mental Health & Courts: Crisis of Competency Podcast](#) (National Association for Court Management)

This document was developed under the Mental Health Initiative: Phase II Grant #SJI-20-P-054 from the State Justice Institute and approved by the Task Force Executive Committee. The points of view expressed do not necessarily represent the official position or policies of the State Justice Institute.

May 2022

