

# ELIMINATE the WAIT

## The Texas Toolkit for Rightsizing Competency Restoration Services

October 2021



**TEXAS**  
Health and Human  
Services™

# ELIMINATE the WAIT

## About the Judicial Commission on Mental Health

The Judicial Commission on Mental Health (JCMH) was created by a joint order of the Supreme Court of Texas and the Court of Criminal Appeals of Texas. The mission of the JCMH is to engage to empower court systems through collaboration, education, and leadership, thereby improving the lives of individuals with mental health needs, intellectual and development disabilities, and substance use disorders. For more information, see [www.texasjcmh.gov](http://www.texasjcmh.gov).

## About the Texas Health and Human Services Commission

The Texas Health and Human Services (HHS) System is comprised of more than 41,000 public servants under two agencies: The Health and Human Services Commission (HHSC) and The Department of State Health Services (DSHS).

These agencies serve millions of people each month and deliver hundreds of programs and services. Additionally, the agency operates 13 state supported living centers, which provide direct services and supports to people with IDD, and 10 state hospitals, which serve people who need inpatient psychiatric care.

## About Eliminate the Wait

It is time to right size competency restoration services for Texans by taking a holistic approach to this challenge. The Texas Judicial Commission on Mental Health and the Texas Health and Human Services Commission asks judges, prosecutors, defense attorneys, sheriffs and jail staff, police, and behavioral health providers to join their collaborative effort to change how Texas serves people at the intersection of mental health and criminal justice. We all have a role to play to **ELIMINATE THE WAIT**.

This toolkit includes a set of strategies that stakeholders can implement to help **ELIMINATE THE WAIT** for inpatient competency restoration services in Texas.

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## Suggested Citation

### *Bluebook Citation:*

TEXAS JUDICIAL COMMISSION ON MENTAL HEALTH & TEXAS HEALTH AND HUMAN SERVICES COMMISSION, *ELIMINATE THE WAIT: THE TEXAS TOOLKIT FOR RIGHTSIZING COMPETENCY RESTORATION SERVICES* (1st ed. 2021).

### *APA Citation:*

Texas Judicial Commission on Mental Health & Texas Health and Human Services Commission. (2021). *Eliminate the Wait: The Texas Toolkit for Rightsizing Competency Restoration Services*.

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## Acknowledgements

The JCMH and the HHSC would like to recognize the leadership and support of Justice Jane Bland, Supreme Court of Texas, and Judge Barbara Hervey, Texas Court of Criminal Appeals, Chairs of the JCMH; Sonja Gaines, Deputy Executive Commissioner for IDD and Behavioral Health Services; and Scott Schalchlin, Deputy Executive Commissioner for the Health and Specialty Care System. Thank you, also, to the Supreme Court of Texas, and the Court of Criminal Appeals of Texas.

The JCMH and HHSC would also like to recognize the following contributing authors and editors of this Toolkit:

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A special thank you to the organizations who agreed to send their constituents the ***Eliminate the Wait*** checklists to ensure that best practices, promising practices, and great ideas were being shared throughout Texas:

Texas Center for the Judiciary  
Texas Association of Counties  
Texas Council of Community Centers  
Texas Criminal Defense Lawyers Association  
Texas District and County Attorneys Association  
Texas Indigent Defense Commission  
Texas Justice Court Training Center  
Texas Municipal Courts Education Center  
Texas Police Chiefs Association  
Texas Sheriffs Association

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*\*Checklists arranged Sequential Intercept Model order.*

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## The Texas Toolkit for Rightsizing Competency Restoration Services

The competency to stand trial process is designed to protect the rights of people who do not understand the charges against them and are unable to assist in their own defense. Like other states across the U.S., Texas faces a growing crisis in the number of people who are waiting in county jails for inpatient competency restoration services after being declared incompetent to stand trial (IST). Not only has this increased costs and overburdened state agencies and county jails but it also is taking a significant toll on the health and well-being of people waiting in Texas jails for inpatient competency restoration services. Meanwhile, resources available to the behavioral health and justice professionals serving our communities are becoming scarce.

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**More than 1,800** people are currently waiting in Texas jails for Competency Restoration Services.

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**Over the past 20 years, Texas has seen a 38% increase** in people who are found incompetent to stand trial.

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**Nearly 70% of state hospital beds** in Texas are used by the forensic population.

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It is time to right size competency restoration services for Texans by taking a comprehensive and integrated approach to this challenge. The JCMH and the HHSC asks judges, prosecutors, defense attorneys, sheriffs and jail staff, police, and behavioral health providers to join their collaborative effort to change how Texas serves people at the intersection of mental health and criminal justice. We all have a role to play to **ELIMINATE THE WAIT**.

This toolkit includes a set of strategies that stakeholders can implement to help **eliminate the wait** for inpatient competency restoration services in Texas.

*"We applaud this collaborative effort to raise awareness about competency-restoration services and best practices. It engages courts, law enforcement, and mental health professionals in an effort to better use state resources for people with mental health disorders or intellectual and developmental disabilities who encounter our justice system."*

*Hon. Jane Bland, Justice, Supreme Court of Texas; Chair, JCMH*

*Hon. Barbara Hervey, Judge, Court of Criminal Appeals of Texas; Chair, JCMH*

*"We have a responsibility to work across systems to reduce and prevent justice involvement and connect people to care in the community. When competency restoration is needed, it should be for the purpose it was intended: to provide stabilization and legal education."*

*Sonja Gaines, Deputy Executive Commissioner for HHSC Intellectual and Developmental Disability and Behavioral Health Services*

*Scott Schalchlin, Deputy Executive Commissioner for HHSC Health and Specialty Care System*

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## The Causes

People with a mental illness or an intellectual or developmental disability are often arrested when diversion is appropriate and possible. The Texas Code of Criminal Procedure Art. 16.23(a) states, officers shall make a good-faith effort to divert a person who is suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the law enforcement agency's jurisdiction.<sup>1</sup>

Competency evaluation orders are often tied to a well-intended, but inaccurate, understanding of competency restoration services. Some people view competency restoration as a way to connect a person with mental health treatment. The reality, however, is that competency restoration services have a narrow focus on stabilization, symptom management, and required legal education. This is not the same as providing access to a fully developed treatment plan and treatment services with the goal of long-term recovery and rejoining the community.

The process does not currently operate at maximum efficiency. It can take months to over a year from the time incompetency is raised to the final disposition of the criminal case. This is, in part, due to inefficiencies in managing case flow, communicating between parties and scheduling. Sometimes a person who has been restored at a state hospital and returned to jail experiences deterioration of their mental health while waiting for their competency hearing.

## The Solutions

**Build a state roadmap for eliminating the wait.** JCMH and HHSC are launching the **Eliminate the Wait initiative** to provide an actionable roadmap for reducing and eliminating the waitlist for inpatient competency restoration services.

**Develop tailored resources and technical assistance.** Using evidence-based strategies, JCMH and HHSC are working together to develop new trainings and educational materials focused on opportunities for diversion to treatment at all points in the criminal justice system. These will be used by judicial officials, jail staff, local mental health authorities, people who have lived experience with incompetency to stand trial, and the public.

**Enhance accountability.** Through pilot programs, resources, and research, JCMH and HHSC will contribute to our understanding of the public safety and fiscal implications of reducing and eliminating the wait. Millions of taxpayer dollars and thousands of public safety hours are spent each year on services related to competency restoration – from arrest to inmate housing, court proceedings to inpatient state hospital stays, and, finally, to disposition. Eliminating the wait for inpatient competency restoration services brings accountability to public safety and fiscal stewardship.

<sup>1</sup> The factors in Tex. Code Crim. Proc. Art. 16.23(a)(1) through (4) must also be met. Certain offenses are not eligible pursuant to Tex. Code Crim. Proc. Art. 16.23(b).





# ELIMINATE the WAIT

## What's My Role to Eliminate the Wait for Competency Restoration Services?

### Local Mental Health and Behavioral Health Authorities, Local Intellectual and Developmental Disability Authorities, and other Behavioral Health Treatment Providers

*Behavioral health treatment providers are the frontline in reducing the number of people with a mental health (MH), substance use disorder (SUD), or an intellectual and developmental disability (IDD) who become involved in the criminal justice system. These efforts include offering timely crisis response and pre-arrest diversion programs, providing quality community-based services, and establishing positive relationships with criminal justice partners to facilitate a collaborative approach. By connecting people to care outside of the criminal justice system, behavioral health treatment providers can reduce the number of people in need of competency restoration services. If a person is found incompetent to stand trial, providing alternatives to inpatient competency restoration can prevent a person from waiting in jail for an available inpatient bed.*

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#### 1. Expand Crisis Response and Pre-Arrest

##### Diversion Options

- Do I offer a range of crisis services?
  - Do I offer services that are accessible at the earliest signs of crisis, such as walk-in appointments and telehealth, if permitted?
  - Do I offer a range of services for people experiencing acute crisis, such as round-the-clock mobile crisis teams and short-term crisis stabilization services?
  - Do I offer follow up services after a crisis care episode that ensure ongoing access to care such as care coordination?
- Do I have pre-arrest diversion programs and partnerships in place in all counties in my local service area that focus on preventing criminal justice involvement of people with MH, SUD, or IDD, as described in [Tex. Health & Safety Code §§ 533.0354 and 533.108](#)?
  - Do I deploy a full range of public safety responses, including partnering with emergency medical services?
  - Do I provide crisis response support to law enforcement through co-response or virtual co-response?
- Have I developed a shared understanding with local law enforcement officers on the scope of their discretion and responsibilities for an emergency detention without a warrant under [Tex. Health & Safety Code § 573.001](#)?<sup>1</sup>
- Do I have a range of easy access drop-off options for all counties in my local service area for people who need immediate crisis support?

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#### 2. Promote Alternatives to Inpatient Competency Restoration

- Do I offer outpatient competency restoration (OCR) and/or jail-based competency restoration (JBCR) to provide an alternative to inpatient competency restoration services? If not, have I explored these options?
- Do I have a process in place for actively monitoring persons under a Code of Criminal Procedure 46B commitment order based on Form Z, the Forensic Clearinghouse Waitlist Template?

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#### 3. Provide Services that Reduce Justice-Involvement and Ensure Continuity of Care

- If a person has been identified to be incarcerated through the continuity of care query (CCQ), do I have an outreach plan in place with my jail?<sup>2</sup>
- Do I offer contracted jail-based treatment services?
- Are my staff educated on justice-responsive programs and interventions, such as cognitive behavioral treatment targeted to criminogenic risk, motivational interviewing, forensic intensive case management, and critical time intervention?
- Are my staff educated on criminogenic risk and need factors that contribute to recidivism?

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## 4. Lead Through Partnership

- Do I coordinate, communicate, and collaborate with criminal justice partners?
- Do I have representation from criminal justice partners on my advisory board, including police departments, sheriffs' offices, and courts?
- Do I, or staff, participate in local planning boards and workgroups focused on issues at the intersection of behavioral health and criminal justice?
- Are criminal justice partners educated on diversion programs available through my organization, including the crisis hotline, mobile crisis response, mental health deputies, co-responder teams, and other like programs?
- If I provide OCR and/or JBCR services, do I provide education to defense attorneys, prosecutors, and judges on these programs as alternatives to inpatient competency restoration?
- Do I actively promote my organization's diversion programs with criminal justice partners?
- Do I offer training to criminal justice partners on Mental Health First Aid?
- Are policies, procedures, and/or processes in place for diversion programs that clarify and outline the roles, responsibilities, and actions of my staff and those of our criminal justice partners?
- Do I or my leadership team have a direct connection or relationship with each of my criminal justice partners, including law enforcement, jail administration, and the judiciary for each county in my service area?
- Do I understand the challenges experienced by criminal justice partners in working with my organization as well as in utilizing my crisis and diversion programs?



## Additional Resources:

- [Principles of Community-based Behavioral Health Services for Justice-involved Individuals: A Research-based Guide | SAMHSA Publications and Digital Products](#)
- [Tailoring Crisis Response and Pre-Arrest Diversion Models for Rural Communities | SAMHSA Publications and Digital Products](#)
- [Forensic Assertive Community Treatment \(FACT\): A Service Delivery Model for Individuals with Serious Mental Illness Involved with the Criminal Justice System | SAMHSA](#)
- [How to Successfully Implement a Mobile Crisis Team | Council of State Governments Justice Center](#)
- [Building a Comprehensive and Coordinated Crisis System | Council of State Governments Justice Center](#)
- [Justice and Mental Health Collaboration Program Implementation Science Checklist Series | Council of State Governments Justice Center](#)
- [Roadmap to the Ideal Crisis System: Essential Elements, Measurable Standards, and Best Practices for Behavioral Health Crisis Response | National Council for Behavioral Health](#)
- [Cops, Clinicians, or Both? Collaborative Approaches to Responding to Behavioral Health Emergencies | National Association of State Mental Health Program Directors](#)
- [Data Collection Across the Sequential Intercept Model: Essential Measures | SAMHSA](#)

This document is not intended to expand the requirements in the Statement of Work of the LMHA/LBHA's Performance Agreement with HHSC.

<sup>1</sup> Tex. Health & Safety Code Section 573.001 provides peace officers with broad discretion to make a warrantless apprehension of a person with mental illness, regardless of age, when the officer has reason to believe and does believe that because of the mental illness "there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained." This belief may be based on information provided by a credible person, the apprehended person's conduct; or the circumstances under which the apprehended person is found. If a warrantless apprehension is made, peace officers must:

Transport the individual to the nearest appropriate inpatient mental health facility or a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available OR Transfer the apprehended person to emergency medical services personnel of an emergency medical services provider in accordance with a memorandum of understanding executed under Texas Health & Safety Code 573.005 for transport to the nearest appropriate mental health facility or, if one is not available, to a mental health facility deemed suitable by the local mental health authority.

Pursuant to Texas Health & Safety Code Section 573.002, give notice of detention to the facility using *Notification of Emergency Detention* form; without notice, the facility may not hold the person involuntarily.

<sup>2</sup> When a person is processed into correctional institutions, facility personnel run a CCQ and receive an alert which identifies if the individual has a history of receiving mental health services from state-funded mental health programs.

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## What's My Role to Eliminate the Wait for Competency Restoration Services?

### POLICE

*Police officers are the gatekeepers of the criminal justice system. Texas law has granted peace officers discretion in diverting people with a mental illness (MI), substance use disorder (SUD), or an intellectual or developmental disability (IDD) from the criminal justice system without arrest, when appropriate. By doing this, peace officers help ensure that criminal justice system resources are focused on people who truly pose a threat to public safety, thus decreasing the number of people who enter the criminal justice system and reducing demand for inpatient competency restoration services.*

#### 1. Plan for a Pre-Arrest Diversion and Crisis Response

- Have I identified pre-arrest diversion and crisis response models that will work for my agency and community (e.g., Crisis Intervention Team training; law enforcement and mental health co-response; clinician and officer remote evaluation programs; or other interdisciplinary mobile crisis response teams) and developed policies and procedures to support the implementation of these models?
- Do I have a single representative (ideally senior level) that is responsible for overseeing and managing pre-arrest diversion and/or crisis response programs?
- Are policies and procedures in place for crisis responses that clarify and outline the roles, responsibilities, and actions of my staff and those of our behavioral health partners?
- Do I have interagency memoranda of understanding, policies, procedures, and/or agreements to help guide referrals from my agency to local behavioral health providers?
- Do I collect data to help improve pre-arrest and crisis response programs?

#### 2. Create a Culture of Diversion First

- Do I communicate to my officers the importance of diverting people with MI, SUD, or IDD, when appropriate, from the criminal justice system and connecting them to treatment?
- Do I have an agency policy for interactions with people who have MI, SUD or IDD?
- Per [Tex. Code Crim. Proc. Art.16.23\(a\)](#), are my officers aware that they **must** make a good-faith effort to divert a person (1) suffering a mental health crisis or (2) suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if:
  - 1) there is an available and appropriate treatment center in the department's jurisdiction to which the agency may divert the person;
  - 2) it is reasonable to divert the person;
  - 3) the offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence; and
  - 4) the mental health crisis or substance abuse is suspected to be the reason the person committed the alleged offense.
- Per [Tex. Code Crim. Pro. Art. 14.035](#), are my officers aware of the alternative to arrest release locations for an individual with IDD?
- Are my officers aware of the scope of their discretion and responsibilities for an emergency detention without a warrant under [Tex. Health & Safety Code § 573.001](#)?
- Do I actively work across my organization and with local partners to troubleshoot and address barriers to diversion?



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- Per [CCP 14.035](#), are my officers aware that they may release a person with IDD who resides in a group home or intermediate care facility to that residence if the officer believes that: (1) incarceration is unnecessary to protect the person and the other residents, and (2) the officer made reasonable efforts to consult with the person and the staff at the residence regarding that decision?

### 3. Lead Through Partnerships

- Does my agency coordinate, communicate, and collaborate with behavioral health partners?
- Do I or my staff participate in local planning boards and workgroups focused on issues at the intersection of behavioral health and criminal justice?
- Am I aware of diversion programs available through my Local Mental Health Authority (LMHA), Local Behavioral Health Authority (LBHA), and Local Intellectual and Developmental Disability Authority (LIDDA), including crisis hotlines, mobile crisis response, mental health deputies, co-responder teams, and other similar programs?
- Have I developed relationships with a broad range of behavioral health partners, including service providers, advocates, substance use treatment providers, housing officials, hospital and emergency room administrators, and other criminal justice personnel?
- Have I explored options at the point of 911 call-taking and dispatch to support pre-arrest diversion and improve behavioral health crisis response?
- Do I receive training from my LMHA, LBHA, or LIDDA on Mental Health First Aid, a national program to teach the skills to respond to the signs of mental illness and substance use?
- Do I or my leadership team have a direct connection or relationship with my LMHA, LBHA, or LIDDA leadership and other local behavioral health experts?
- Do I understand the challenges experienced by behavioral health treatment providers in working with my agency?

### Additional Resources:

- [Request Technical Assistance through the Council for State Governments Justice Center: Law Enforcement-Mental Health Learning Site Program](#)
- [Police-Mental Health Collaboration \(PMHC\) Toolkit | Bureau of Justice Assistance](#)
- [Mental Health | International Association of Chiefs of Police](#)
- [Law Enforcement Mental Health Support Center | Council of State Governments Justice Center](#)
- [Police Mental Health Collaboration Self-Assessment Tool | Council of State Governments Justice Center](#)
- [Sharing Behavioral Health Information within Police-Mental Health Collaborations | Council of State Governments Justice Center](#)
- [Police-Mental Health Collaborations: A Framework for Implementing Effective Law Enforcement | Council of State Governments Justice Center](#)
- [Responses for People Who Have Mental Health Needs | Council of State Governments Justice Center](#)
- [Cops, Clinicians, or Both? Collaborative Approaches to Responding to Behavioral Health Emergencies | National Association of State Mental Health Program Directors](#)
- [Data Collection Across the Sequential Intercept Model: Essential Measures | Substance Abuse and Mental Health Services Administration](#)

Tex. Health & Safety Code Section 573.001 provides peace officers with broad discretion to make a warrantless apprehension of a person with mental illness, regardless of age, when the officer has reason to believe and does believe that because of the mental illness “there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained.” This belief may be based on information provided by a credible person, the apprehended person’s conduct; or the circumstances under which the apprehended person is found. If a warrantless apprehension is made, peace officers must:

- Transport the individual to the nearest appropriate inpatient mental health facility or a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available  
OR
- Transfer the apprehended person to emergency medical services personnel of an emergency medical services provider in accordance with a memorandum of understanding executed under Texas Health & Safety Code 573.005 for transport to the nearest appropriate mental health facility or, if one is not available, to a mental health facility deemed suitable by the local mental health authority.

Give notice of detention to the facility using *Notification of Emergency Detention* form; without notice, the facility may not hold the person involuntarily.

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## What's My Role to Eliminate the Wait for Competency Restoration Services?

### SHERIFFS AND JAIL ADMINISTRATORS

*Sheriffs and jail administrators play a critical role in improving the competency restoration process. When appropriate, they can reduce further involvement with the criminal justice system and the need for competency restoration services through jail diversion; early identification of people with a mental illness (MI), substance use disorder (SUD), or intellectual and developmental disability (IDD); and timely interventions, like connection to treatment. Provision of behavioral health services and medications while a person is incarcerated may increase the likelihood that a person's symptoms improve and reduce the potential for mental health deterioration that may lead to findings that they are incompetent to stand trial.*

#### 1. Identify MI, SUD, and IDD and Provide Treatment and Services in Jail Settings

- Am I in compliance with state and federal laws to provide medical care to inmates, including mental health treatment?
  - Do I provide access to 24/7 telemental health? [Tex. Gov't Code § 511.009\(a\)\(19\)](#).
  - Do I provide their prescription MH medications as required by law? [Tex. Gov't Code § 511.009\(d\)](#).
  - Do I provide mandatory prescription review by qualified medical professional asap? [Tex. Gov't Code § 511.009\(d\)](#); [37 Tex. Admin. Code Ch. 273.2\(12\)](#).
- Am I aware that the Local Mental Health Authority (LMHA) or Local Behavioral Health Authority (LBHA) may be able to provide independently contracted correctional mental health care in my jail, in addition to crisis screenings and assessments already provided?
- Am I, and are my staff, familiar with [Code of Criminal Procedure \(CCP\) Article 16.23](#) and the good faith effort required to divert individuals suffering from MI, IDD, or SUD?
- Am I familiar with the statutory requirements under the [CCP Article 16.22](#) (requirements first enacted under the Sandra Bland Act)?
  - Do I have a policy on prescriptions in jail that is shared with defense attorneys to assist in getting timely information to provide medication?
  - Am I aware that I am responsible for the medical records of a defendant while that defendant is confined in my jail? If so, do I have appropriate procedures surrounding the collection and maintenance of the 16.22 reports, as now required under [CCP 16.22 \(b-1\)](#)?

- Do I have a process in place to facilitate court-ordered medications?
- Do I ensure my medical contracts encompass providing court-ordered medications and requesting orders for medication when needed?
- Do I have standard operating procedures in place delineating the process for providing timely written or electronic notice to a magistrate of credible information that may establish reasonable cause to believe that a person has a MI or IDD? [Tex. Code Crim. Proc. art. 16.22\(a\)\(1\)](#).
- Do my correctional staff conduct the mandatory Continuity of Care Query<sup>1</sup> (CCQ) for every person at booking and do I have a process in place for notifying my LMHA, LBHA, or LIDDA if there is a match?
- Do my correctional staff provide MI, SUD, and suicide screenings for every person at booking? [37 Tex. Admin. Code § 273.5](#)
- Do I have a standard operating procedure in place to screen individuals for mental illness after booking if a mental illness is later suspected?

#### 2. Provide Care and Coordination with Courts and State Hospitals for People Found Incompetent to Stand Trial

- Do I work with my LMHA or LBHA to monitor people on CCP 46B commitments?
- Have I discussed operating a Jail-Based Competency Restoration program with my LMHA/LBHA?
- Do I ensure that once a person is returned to my jail after restoration at a state hospital, I continue to provide medication prescribed by the state hospital and mental health services to prevent deterioration prior to an appearance in court per [CCP 46B.0825](#)?

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- Have I established a method to promptly provide updates to the courts on competency cases, competency returns, competency deteriorations and other changes to assist the court in prioritizing and proactively addressing the competency cases?
  - Is there one point of contact between my agency and the courts to address specific MH issues? (e.g., coordinating bench warrants or transportation to and from the state hospital and county jail.)
- Am I, and is my staff, aware that Texas Health and Human Services Commission offers resources on 46B processes, including resources for requesting court orders for administration of medication?

### 3. Lead Through Partnerships

- Does my agency coordinate, communicate, and collaborate with mental health partners, including judges, the state, and defense attorneys?
- Do I or my staff participate in local planning boards and workgroups focused on issues at the intersection of mental health and criminal justice?
- Am I aware of diversion programs available through my LMHA/LBHA, including crisis hotlines, mobile crisis response, mental health deputies, co-responder teams, and other similar programs?
- Do I receive training from my LMHA/LBHA on Mental Health First Aid, a national program to teach the skills to respond to the signs of mental illness and substance use?
- Do I, or my leadership team, have a direct connection or relationship with my LMHA/LBHA leadership and other qualified local mental health experts?
- Do I, or my leadership team, have a direct connection with the courts and/or mental health court liaisons?
- Do I understand the challenges experienced by behavioral health treatment providers in working with my agency?
- Have I developed a relationship with the qualified mental health experts used by magistrates in my community for 16.22 evaluations?
- Do I accept and disclose information about defendants with MH/IDD challenges, to serve the purposes of continuity of care and services as permitted by [Health & Safety Code §614.017](#)?

### Additional Resources:

- [Request Technical Assistance from the National Institute of Corrections on providing mental health care in jails.](#)
- [Managing Mental Illness in Jails: Sheriffs are Finding Promising New Approaches | Police Education and Research Forum](#)
- [Jails: Inadvertent Health Care Providers. How County Correctional Facilities are Playing a Role in the Safety Net | Pew Charitable Trusts](#)
- [Mentally Ill Persons in Corrections | National Institute of Corrections](#)
- [Adults with Behavioral Health Needs Under Correctional Supervision: A Shared Framework for Reducing Recidivism and Promoting Recovery | National Institute of Corrections](#)
- [Resources for Interactions between Law Enforcement and Individuals with Mental Health Issues | NATIONAL SHERIFFS' ASSOCIATION](#)
- [Standards of Care: Mental Health in Our Jails and Prisons...Now What? | Justice Clearinghouse](#)
- [Data Collection Across the Sequential Intercept Model: Essential Measures | SAMSHA](#)
- [Just and Well: Rethink How States Approach Competency to Stand Trial | The Council of State Governments Justice Center](#)

<sup>1</sup>When a person is processed into correctional institutions, facility personnel run a TLETS CCQ and receive an alert that identifies if the individual has a history of receiving mental health services or IDD services from state-funded mental health/IDD programs. An exact or probable match from the CCQ serves as credible information.



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# ELIMINATE the WAIT

## What's My Role to Eliminate the Wait for Competency Restoration Services?

### JUDGES AND COURT STAFF

*Judges play an essential role in helping eliminate the wait for competency restoration (CR) services. By leading and facilitating the collaboration of parties, courts can connect people with the appropriate mental health treatment and services. Furthermore, Judges ensure the legal system is more just, compassionate, and fair by promoting practices that help those with mental illness (MI) and Intellectual and Developmental Disabilities (IDD) receive the necessary treatment to prevent recidivism, thus balancing community needs and judicial economy.*

#### 1. Identify and Meet Mental Health and IDD Needs at the Earliest Point

- Do I receive timely notice of credible information from jail administration that may establish reasonable cause to believe that an individual is a person with MI or IDD? [Tex. Code Crim. Proc. \(CCP\) art. 16.22\(a\)\(1\)](#).
- Do I (or the Magistrate Judge) order the 16.22 Interview if reasonable cause is found (from the jail admin or from an alternative source)?
- Do I send copies of the Collection of Information Report (16.22 Report) from the Interview to the defense counsel, prosecutor, trial court with jurisdiction, sheriff, and personal bond office/pretrial supervision office? [CCP art. 16.22\(b-1\)](#).
- Have I, or has my county, developed a process for effective and efficient ordering, collecting, distributing, and consideration of 16.22 requests, interviews, and reports?
- Is this process written in a procedure manual for others to follow in the future?
- Do I (or the magistrate judge) appoint an attorney (if applicable) as soon as possible?
- If MI or IDD is evident, am I appointing someone with training and experience on mental health (MH) and IDD and related legal issues?
- Am I in communication with my Sheriff about the issues that arise in my court if the jail does not ensure individuals in custody:
  - Have access to 24/7 telemental health and telehealth? [Tex. Gov't Code § 511.009\(a\)\(19\)](#).
  - Are being provided their prescription MH medications as required by law? [Tex. Gov't Code § 511.009\(d\)](#).
- Have I considered utilizing a MH liaison position in the courts to connect with the jails and treatment providers, and to coordinate between courts with criminal jurisdiction and those with probate jurisdiction over civil commitments?
- Does my Local Mental Health Authority (LMHA) or Local Behavioral Health Authority (LBHA) have a MH liaison already? Is my court able to communicate with this person effectively and quickly regarding specific cases and dockets?
- Have I developed a specialty court as required under [Tex. Gov't Code § 125.005?](#)

#### 2. Create a Culture of Diversion First

- Are the 16.22 Reports and risk assessments being used for decisions about bail, appointment of counsel, treatment, specialty courts, & community supervision conditions? [CCP art. 16.22\(c\)\(1\) - \(5\)](#).
- On misdemeanor cases, **am I considering treatment or diversion alternatives first**, and using competency evaluations only as a last resort when alternatives are not available or appropriate?
- Are diversion alternatives being considered for individuals when appropriate?
- Have I considered outpatient or inpatient MH treatment instead of competency restoration? Has the option for Outpatient Competency Restoration (OCR) been discussed with Defense and State?
- If the offense charged does not involve an act, attempt, or threat of serious bodily injury to another person, have I considered [CCP art. 16.22\(c\)\(5\)](#) to release the defendant (D) on bail with charges pending, enter an order transferring D to the appropriate court for court-ordered outpatient mental health services under [Tex. Health & Safety Code ch. 574?](#) [CCP art. 16.22\(c\)\(5\); HSC 574.0345](#).

#### 3. Consider Alternatives to State Hospital if CR is Necessary

- Am I aware that **competency restoration services (CRS) are not comprehensive mental health treatment?**
  - The goal of CR is to return the client to a competent state that would allow resumption of the adjudication process. While symptoms of mental illness may be reduced during the client's time in CR services, CR is not a substitute for comprehensive MH treatment.
- Have I considered Outpatient Competency Restoration or Jail-Based Competency Restoration in lieu of inpatient CR? [CCP art. 46B.071](#).
- I am aware if OCR and JBCR is available in my community. If not available, am I aware of what I can do to advocate for the creation of one or both in my community?
- Upon an indication of restoration, have I approved funding for the defendant to be re-evaluated after stabilization to see if D is still incompetent [CCP art. 46B.0755?](#)

# ELIMINATE the WAIT

## 4. Create Efficient Court Policies for People who Receive Inpatient CR Services at the State Hospital (SH)

- Have I assigned one point-of-contact between my Court and the SH?
- Have I sent a letter annually to the SH notifying them of my point-of-contact, who should receive all communication (name, email address, fax, and phone)?
- Have I established an efficient process for communicating with the SH using email?
- Does my Court coordinate with the probate court to have medication proceedings when applicable, and start medication orders immediately, while the person awaits transport to SH? See [Health & Safety Code § 574.106 \(MI\)](#); [§ 592.156 \(IDD\)](#); [CCP art. 46B.086](#).
- If D is on court ordered medications, have I ordered another competency evaluation after stabilization or a check for evidence of immediate restoration under [CCP art. 46B.0755](#)?
- Do I schedule status conferences periodically, as needed, while the client is at SH? Do I urge the Defense and State Attorneys to continue to work on the case while waiting for the individual to return from SH?
- Do I coordinate bench warrants to and from the SH?
- To prevent decompensation, does my court set cases *preferentially* when an individual has been restored to competency under CCP 46B.084 and returned to my county? [CCP art. 32A.01](#).
- Does the point-of-contact communicate with my coordinator to set the person on a docket quickly upon returning from the SH or other CR program?

## 5. Leading through Partnerships

- Has my Court gathered key stakeholders to meet regularly to improve communication regarding diversion?
- Has my community planned and established co-located services?
- Are the agencies and individuals listed in [Health & Safety Code § 614.017 Exchange of Information](#) accepting and disclosing information about defendants with mental health/IDD challenges, including jails, LMHAs, attorneys, judges, probation, TDCJ, and others?

## 6. Education and Awareness

- Do I require training for the defense bar on best practices for clients with MH/IDD including identification, interaction, protections in Texas law, and diversion options? Have I considered partnering with JCMH, or other appropriate attorney educator to create needed training?
- Do I foster an open dialog about the common misunderstandings associated with Competency Restoration Services (CRS)?
  - Many times, requests for competency evaluations are attributable to a well-intended, but inaccurate, understanding of CRS. Some view CR as a method for connecting individuals to mental health treatment.
  - The reality, however, is that CRS are narrowly focused on stabilization, symptom management, and required legal education. This is not the same as providing access to a fully developed treatment plan and services with the goal of long-term recovery and a positive place in the community.
- Does my Court utilize a list of attorneys with specialized knowledge in MH or IDD for complex cases?
- Do I have a separate fee schedule to pay attorneys with specialized MH/IDD knowledge more for handling these types of cases?
- Is my referral process to a mental health court in written form and shared with referral sources?
- Who are the referral sources (e.g., prosecutors, defense attorneys, judges)? Are they familiar with identification of individuals with mental illnesses and understand potential judicial responses?
- Are all the judges and attorneys in my community aware of the diversion options?
- Is my policy of preferential settings for cases in which an individual has been restored to competency and returned to the county written for lawyers to know and abide by the procedures? [CCP art. 32A.01](#)

### Additional Resources:

- Judicial Commission on Mental Health, *Texas Mental Health and Intellectual Disabilities Law Bench Book* (3d ed. 2021-2022) <http://benchbook.texasjcmh.gov/>.
- CMHS National Gains Center, *Practical Advice on Jail Diversion: Ten Years of Learnings on Jail Diversion from the CMHS National GAINS Center* (2007), <http://www.pacenterofexcellence.pitt.edu/documents/PracticalAdviceOnJailDiversion.pdf>.
- Texas Appleseed et al., *Mental Illness, your Client and the Criminal Law: A Handbook for Attorneys Who Represent Persons with Mental Illness* (4<sup>th</sup> ed. 2015), [https://www.texasappleseed.org/sites/default/files/Mental\\_Health\\_Handbook\\_Printed2015.pdf](https://www.texasappleseed.org/sites/default/files/Mental_Health_Handbook_Printed2015.pdf).
- Alyse Ferguson, Chief Attorney, Collin County Mental Health Managed Counsel, *Practical Ideas for Counties to Streamline Competency Restoration and Save Money* (2020) [http://iemvirtual.com/wp-content/uploads/2020/11/Practical-Tips-for-Competency-Restoration .pdf](http://iemvirtual.com/wp-content/uploads/2020/11/Practical-Tips-for-Competency-Restoration.pdf).
- Brian D. Shannon & Daniel H. Benson, *Texas Criminal Procedure and the Offender with Mental Illness 102-03* (6th ed. 2019) <https://3394qh4fg22b3jpwmm94480xg-wpengine.netdna-ssl.com/wp-content/uploads/sites/12/2019/10/Shannon-6th-Edition-Oct-2019-for-NAMI-Texas-website.pdf>.





# ELIMINATE the WAIT

## What's My Role to Eliminate the Wait for Competency Restoration Services?

### PROSECUTORS

*Prosecutors play a critical role in helping to eliminate the wait for competency restoration (CR) services. If appropriate, diversion and connection to treatment is ideal to reduce further penetration into the criminal justice system and the need for CR services. Provision of mental health (MH) services and medications while a person is incarcerated may increase the likelihood that the person's symptoms improve, reducing the likelihood that the person is found incompetent to stand trial (IST), or leading to the immediate restoration of a person previously found incompetent to stand trial.*

#### 1. Identify and Meet Mental Health and IDD Needs at the Earliest Point

- Does Magistrate Judge order a 16.22 Interview if reasonable cause is found? Does the Magistrate Judge send me a copy of the Collection of Information Report (16.22 Report) in a timely manner?
- Is there a mechanism in place for the 16.22 reports to be maintained and then sent to the trial court and defense attorney once they are assigned? [CCP art. 16.22\(b-1\)](#).
- Do I suspect MH or IDD issues while reviewing discovery? Have I noted this in the file? Have I brought this to the attention of the defense attorney? Do I take this into account when deciding the disposition of the case and alternatives offered?
- Do I participate and attend collaborative meetings with key personnel to review cases and address MH and IDD issues early in the process?

#### 2. Work Toward Diversion First

- Have I reviewed the case and determined if a case should be filed and, if so, at what charging level? Did I consider MH issues or IDD during this process?
- Have I considered a defendant's 16.22 report and risk assessments in my decisions about bail, jail diversions, treatment, and community supervision conditions? [Tex. Code Crim. Proc. \(CCP\) art. 16.22\(c\)\(1\) - \(5\)](#).
- Can I agree to a reasonable bond amount and appropriate bond conditions? Or for a non-violent offense/prior, a PR Bond? [CCP art. 17.032](#); [17.03](#).
- If I am recommending that a defendant is released on personal bond, have I consulted with the defense attorney to determine what, if any, conditions are reasonable, helpful, and doable in this person's circumstances?

- Am I aware that **competency restoration services (CRS) are not comprehensive mental health treatment**?
- CRS are narrowly focused on stabilization, symptom management, and required legal education. This is not the same as providing access to a fully developed treatment plan and services with the goal of long-term recovery and a positive place in the community.
- During negotiations and discussions with the defense attorney, am I open to options other than a competency evaluation? For example:
  - Can I agree to inpatient or outpatient mental health treatment instead of sending the defendant to the state hospital (SH) for inpatient competency restoration?
  - If the offense charged does not involve an act, attempt, or threat of serious bodily injury to another person, can I agree to using [CCP 16.22\(c\)\(5\)](#) to leave charges pending in criminal court and divert the defendant to the appropriate civil court for court-ordered outpatient mental health services under [Tex. Health & Safety Code ch. 574](#)? [CCP art. 16.22\(c\)\(5\)](#); [HSC 574.0345](#).
  - Is this a case suitable for a straight dismissal under [CCP art. 46B.004\(e\)](#)?
- Have I considered the possibility of dismissal with:
  - a treatment plan;
  - a referral to outpatient mental health services;
  - a referral to an assisted outpatient treatment program (with or without civil/probate court supervision); or
  - a transfer to appropriate court to commence civil commitment proceedings? [CCP art. 46B.151](#); [Tex. Health and Safety Code ch. 571, 574](#).

# ELIMINATE the WAIT

- Have I screened the case for possible entry to diversion programs or specialty courts?
- If I decide to dismiss a defendant's case, have I given notice to the defense attorney that allows them to communicate this with their client and assist with a discharge plan or transportation upon release?
- Have I considered whether the potential to adjudicate this case upon restoration is worth the potential personal and societal damage caused by months long wait in the jail before a hospital bed becomes available (i.e., loss of public benefits, disconnection mental health services in the community, loss of housing, loss of connections to community supports, job loss, trauma, or displacement)?
- Am I holding the defense to their burden of proof (BOP) / meeting my BOP?
  - Typically, there is a presumption that the defendant (D) is competent, and defense must prove incompetency by a preponderance of the evidence. [CCP 46B.003\(b\)](#); [Dusky v. U.S., 362 U.S. 402 \(1960\)](#).
  - If the D has a previous, unvacated IST finding, was committed for restoration, & was found not likely to be restored, then the D is presumed incompetent, and the State must prove competency Beyond a Reasonable Doubt. [Manning v. State, 730 S.W.2d 744 \(Tex. Crim. App 1987\)](#).
- Am I suggesting a competency evaluation or inpatient competency restoration services only as a last resort?

### 3. Consider Alternatives to State Hospital if Competency Restoration is Needed

- Have I considered Outpatient Competency Restoration (OCR) or Jail-Based Competency Restoration (JBCR) as an alternative to inpatient and/or SH competency restoration? [CCP art. 46B.071](#).
- I am aware if OCR and JBCR is available in my community? If not available, what can I do to advocate for either or both in my community?

### 4. Continue to Work on Cases when the Defendant Must Wait for Inpatient CR Services at the SH

- Am I continuing to communicate with the defense attorney while the defendant awaits transfer to the SH?
- Have I considered what evidence might fall under the Michael Morton Act specific to MH or IDD cases and produced all evidence that is material to any matter involved in the action? Have I subpoenaed relevant medical, psychological, or education records of the defendant?
- Have I considered what constitutes *Brady* in mental health and IDD cases and produced all evidence to the defense that is in possession of the State and tends to negate the defendant's guilt or mitigate their punishment? Have I reviewed the defendant's previous cases for information, records, or orders that should be produced to the defense?
- Have I considered the mitigation evidence produced by the defense when making an offer on this case? Have I considered offering deferred adjudication?
- Am I working with the court and defense counsel to obtain a fast court setting upon the defendant's return from SH or another CR program to prevent decompensation? Have I requested a preferential case setting under [CCP art. 32A.01](#)?
- Am I advocating that the defendant receive mental health treatment in custody while awaiting transfer to or after returning from SH?
- If necessary, have I filed an application with the probate or other appropriate court to order the administration of medications in custody to help prevent deterioration (or coordinated with the county attorney to file the application)? [Health & Safety Code § 574.106 \(MI\)](#) or [§ 592.156 \(IDD\)](#); [CCP art. 46B.086](#).
- If the Defendant is on court ordered medications, have I requested another competency evaluation after stabilization or a check for evidence of immediate restoration under [CCP art. 46B.0755](#)?
- Is this case one where the defendant is unlikely to restore per [46B.071\(b\)](#)? Have I considered proceeding under [Health & Safety Code subchapters E or F](#) (civil commitment with charges pending or dismissed)?

# ELIMINATE the WAIT

## 5. Create Education and Awareness

- Have I been trained on best practices for cases where a D has MI/IDD including identification, interaction, protections in Texas law, and diversion options? *Consider working with JCMH or other appropriate attorney educator for needed training.*
- Does my office actively discuss educational resources, community resources, and court practices and procedures for individuals with MI or IDD?
- Am I communicating with my office about my successes in diversion techniques for individuals with MI or IDD?

## 6. Lead Through Partnerships

- Am I regularly engaging with the LMHA, LBHAs, LIDDAs, other prosecutor's offices, the defense bar and/or public defenders or managed counsel offices, pretrial services, probation, and the courts to meet formally and regularly to improve communication, policies, and procedures regarding mental health / IDD diversion?
- Are the agencies and individuals listed in [Health & Safety Code § 614.017, Exchange of Information](#), accepting and disclosing information about defendants with mental health/IDD challenges, including jails, LMHAs, LBHAs, LIDDAs, attorneys, judges, probation, the Texas Department of Criminal Justice, and

## Additional Resources:

- Judicial Commission on Mental Health, *Texas Mental Health and Intellectual Disabilities Law Bench Book* (3d Ed. 2021-2022) <http://benchbook.texasjcmh.gov/>.
- CMHS National Gains Center, *Practical Advice on Jail Diversion: Ten Years of Learnings on Jail Diversion from the CMHS National GAINS Center* (2007), <http://www.pacenterofexcellence.pitt.edu/documents/PracticalAdviceOnJailDiversion.pdf>.
- Texas Appleseed et al., *Mental Illness, your Client and the Criminal Law: A Handbook for Attorneys Who Represent Persons with Mental Illness* (4<sup>th</sup> ed. 2015), [https://www.texasappleseed.org/sites/default/files/Mental\\_Health\\_Handbook\\_Printed2015.pdf](https://www.texasappleseed.org/sites/default/files/Mental_Health_Handbook_Printed2015.pdf).
- Alyse Ferguson, Chief Attorney, Collin County Mental Health Managed Counsel, *Practical Ideas for Counties to Streamline Competency Restoration and Save Money* (2020) <http://iemvirtual.com/wp-content/uploads/2020/11/Practical-Tips-for-Competency-Restoration.pdf>.
- Brian D. Shannon & Daniel H. Benson, *Texas Criminal Procedure and the Offender with Mental Illness 102-03* (6th ed. 2019) <https://3394qh4fg22b3jpwm94480xg-wpengine.netdna-ssl.com/wp-content/uploads/sites/12/2019/10/Shannon-6th-Edition-Oct-2019-for-NAMI-Texas-website.pdf>.



# ELIMINATE the WAIT

## What's My Role to Eliminate the Wait for Competency Restoration Services?

### DEFENSE ATTORNEYS

*Defense Attorneys can help eliminate the wait for competency restoration (CR) services. With best practices and current policies, defense attorneys advocate for their clients to receive mental health treatment, find an amicable resolution to the case, and prevent their clients from languishing in jail waiting for inpatient CR services. By focusing on these goals for their individual clients, defense attorneys contribute to the overall effect of reducing the total number of people on the competency restoration waitlist.*

#### 1. Identify and Meet Mental Health (MH) and Intellectual and Developmental Disabilities (IDD) Needs at the Earliest Point

- Is the Magistrate Judge ordering a 16.22 Interview if reasonable cause is found?
- If I believe my client needs a 16.22 interview, am I asking the Magistrate to order one?
- Am I receiving a copy of the Collection of Information Report (16.22 Report) in a timely manner?
- Am I meeting with my client as soon as possible?
- At this meeting, am I asking my client about their MH and IDD history?
- To the greatest extent possible, am I exploring with my client the risks and benefits of all possible options, to include making a choice about whether the client wants to address their MH issues as a part of this criminal process or not?
- If necessary, am I re-visiting a client to re-evaluate their mental state if circumstances change?
- Am I asking my clients if they are receiving their prescription medications in jail? [Tex. Gov't Code § 511.009\(d\)](#).
- If my client is not receiving their medication, am I communicating with the jail, magistrate, and trial court about this issue?
- Have I established communication with the jail MH liaison to get updates about my client and relay information for the client's benefit.
- Do I ensure that my client and/or their family knows how to provide proof of client's valid prescription to the jail?
- Am I considering poverty, cultural differences, and language differences when determining whether to raise issues related to MH, IDD or competency?
- Have I investigated whether my client was ever previously found incompetent to stand trial and the subsequent procedural history?

#### 2. Work Toward Diversion First

- Am I knowledgeable about local MH & IDD resources?
- Have I established a contact within my LMHA, LBHA, and/or LIDDA?
- Am I working closely with my LMHA/LBHA/LIDDA or mental health jail/court liaison to discuss alternatives to incarceration available in my community?
- If my client has not been charged with or previously convicted of a violent offense, have I advocated for my client's release on a MH personal bond? [CCP art. 17.032; 17.03](#).
- During bond hearings, do I use my client's 16.22 report and risk assessments to advocate for my client on decisions about bail, diversion, treatment, and possible community supervision conditions? [Tex. Code Crim. Proc. \(CCP\) art. 16.22\(c\)\(1\) - \(5\)](#).
- If my client is being released on personal bond, have I made arrangements to ensure that the client has the transportation and other supports necessary to adhere to bond conditions?
- Am I aware that **competency restoration services (CRS) are not comprehensive MH treatment**?
  - CRS are narrowly focused on stabilization, symptom management, and required legal education. This is not the same as providing access to a fully developed treatment plan and services with the goal of long-term recovery and a positive place in the community.
- If my client wants to pursue MH treatment as part of their criminal court process, am I zealously advocating for it?
- Have I made sure the prosecutor understands the distinction between CRS and comprehensive MH treatment?
- Have I advocated for the court and prosecutor to consider outpatient or inpatient MH treatment instead of competency restoration for my client?

# ELIMINATE the WAIT

- If the offense charged does not involve an act, attempt, or threat of serious bodily injury to another person, have I used the 16.22 report to advocate for CCP 16.22(c)(5) diversion, which leaves charges pending in criminal court and diverts the defendant to the appropriate civil to the appropriate court for court-ordered outpatient MH services under [Tex. Health & Safety Code ch. 574](#)? [CCP art. 16.22\(c\)\(5\)](#); [HSC 574.0345](#).
- Have I tried negotiating for a dismissal with:
  - a treatment plan;
  - a referral to outpatient MH services;
  - a referral to an assisted outpatient treatment program (with or without civil/probate court supervision); or
  - a transfer to appropriate court to commence civil commitment proceedings? [CCP art. 46B.151](#); [Tex. Health & Safety Code ch. 571, 574](#).
- Am I only using CR when it is necessary and the best resolution for my client that does not cause unnecessary delay or harm to my client? [ABA STANDARDS RELATING TO COMPETENCE TO STAND TRIAL § 7-4.2\(e\) \(1989\)](#).
- Have I considered using *Ake v. Oklahoma*, 470 U.S. 68, 71 (1985), (possibly ex parte with a sealed motion) for appointment of an expert for psychological assessments instead of going down the CR path to achieve the same goals, evaluations, or evidence?
- If necessary, am I requesting funding from the court for psychological evaluations (rather than competency evaluations) for decisions about trial, sentencing, and community supervision?
- Am I meeting my burden of proof (BOP) / holding the state to their BOP?
  - Typically, there is a presumption that the defendant is competent, and defense must prove incompetency by a preponderance of the evidence. [CCP 46B. 003\(b\)](#); *Dusky v. U.S.*, 362 U.S. 402 (1960).
  - If client has a previous, unvacated Incompetent to Stand Trial (IST) finding, was committed for restoration, and was found not likely to be restored, then client is presumed incompetent, and state must prove competency Beyond a Reasonable Doubt. *Manning v. State*, 730 S.W.2d 744 (Tex. Crim. App 1987).
- If the prosecution agrees to dismiss my client's case, have I communicated this with my client and assisted with a discharge plan or transportation upon release? Have I made the prosecution and the court aware of the need to communicate and coordinate with the client, so they are not abruptly released without understanding what happened or transportation or plan?

## 3. Consider Alternatives to State Hospital if CR is Necessary

- Have I considered, or asked the Court to consider Outpatient Competency Restoration (OCR) or Jail-Based Competency Restoration (JBCR)? [CCP art. 46B.071](#).
- I am aware if OCR and JBCR is available in my community? If not available, what can I do to advocate for either or both in my community?
- Do I work with my LMHA/LBHA ahead of the competency hearing to create an OCR plan before the hearing? [CCP art. 46B.072](#).
- Have I specifically made the request for OCR or JBCR on the record?
- Have I specifically requested these alternatives in my motion and proposed order?

## 4. Continue to Advocate for Individuals Who Must Wait for Inpatient CRS at the State Hospital (SH)

- Am I continuing to communicate with my client while they are awaiting transfer to SH to determine if they may have stabilized while waiting in jail (with appropriate MH treatment) to see if incompetency is still an issue in the case? See [TEX. DISCIPLINARY RULES OF PRO. CONDUCT, R. 1.16 Clients with Diminished Capacity](#).
- If stabilization has occurred before transfer, have I requested another competency evaluation or a check for evidence of immediate restoration under [CCP art. 46B.0755](#)?
- Am I advocating for mental health treatment for my client while they are awaiting transfer to SH or other CR program?
- Am I continuing to communicate with my client once they go to the SH? See [TEX. DISCIPLINARY RULES OF PRO. CONDUCT, R. 1.16, Clients with Diminished Capacity](#).
- Am I continuing to progress this case and communicate with the prosecutor while waiting for my client to return from the SH?
- Am I communicating with the SH regarding the direct release of my client? Do I work with my LMHA, LBHA, prosecutor, and court to make a plan to set PR bond and have my client released from SH to community living arrangement?
- If strategically appropriate, and I believe my client is competent, am I working with my court to obtain a fast court setting upon my client's return from SH, or other CR program? Have I requested a preferential setting under [CCP art. 32A.01](#)? If necessary, have I filed a motion for a speedy trial under art. 32A.01?

# ELIMINATE the WAIT

- Am I monitoring my client's cumulative period (in custody, SH, inpatient CR, JBCR) to see if they have reached their maximum period of confinement under [CCP art. 46B.0095](#)?
- Am I working to make sure my client continues to receive their prescription medications while in custody after returning from SH? [Tex. Gov't Code § 511.009\(d\)](#).

## 5. Leading Through Partnerships

- Am I regularly engaging with the LMHA, Prosecutor's offices, other defense bar and/or public defenders or managed counsel offices, pretrial services, probation, and the courts to meet regularly to improve communication, policies, and procedures regarding mental health / IDD diversion?
- Are the agencies and individuals listed in [Health & Safety Code § 614.017](#), *Exchange of Information*, accepting and disclosing available information about defendants with MH/IDD challenges, including jails, LMHAs, LBHAs, LIDDAs, attorneys, judges, probation, the Texas Department of Criminal Justice, and others?

## 6. Education & Awareness

- Have I been trained on best practices for clients with MH/IDD including identification, interaction, protections in Texas law, and diversion options? *Consider attending JCMH, or other appropriate attorney educator CLEs for needed training.*
- Does my defense bar, public defender office (PDO), or managed assigned counsel program (MAC) actively discuss education resources, community resources, and court practices and procedures to benefit clients with mental illness or IDD?
- Am I communicating with my defense bar, Public Defenders Office, or Managed Assigned Counsel about my successes in diversion techniques for clients with mental illness or IDD?

## Additional Resources:

- Judicial Commission on Mental Health, *Texas Mental Health and Intellectual Disabilities Law Bench Book* (3d Ed. 2021-2022) <http://benchbook.texasjcmh.gov/>.
- CMHS National Gains Center, *Practical Advice on Jail Diversion: Ten Years of Learnings on Jail Diversion from the CMHS National GAINS Center* (2007), <http://www.pacenterofexcellence.pitt.edu/documents/PracticalAdviceOnJailDiversion.pdf>.
- Texas Appleseed et al., *Mental Illness, your Client and the Criminal Law: A Handbook for Attorneys Who Represent Persons with Mental Illness* (4<sup>th</sup> ed. 2015), [https://www.texasappleseed.org/sites/default/files/Mental\\_Health\\_Handbook\\_Printed2015.pdf](https://www.texasappleseed.org/sites/default/files/Mental_Health_Handbook_Printed2015.pdf).
- Alyse Ferguson, Chief Attorney, Collin County Mental Health Managed Counsel, *Practical Ideas for Counties to Streamline Competency Restoration and Save Money* (2020) <http://iemvirtual.com/wp-content/uploads/2020/11/Practical-Tips-for-Competency-Restoration .pdf>.
- Brian D. Shannon & Daniel H. Benson, *Texas Criminal Procedure and the Offender with Mental Illness 102-03* (6th ed. 2019) <https://3394qh4fg22b3jpw94480xg-wpengine.netdna-ssl.com/wp-content/uploads/sites/12/2019/10/Shannon-6th-Edition-Oct-2019-for-NAMI-Texas-website.pdf>.



# ELIMINATE the WAIT

## What is Health and Human Services doing to Eliminate the Wait for Competency Restoration Services?

*While a full array of community-based services can reduce the need for inpatient care, the Texas Health and Human Services Commission's (HHSC) State Hospital System (SHS) is a critical component of the behavioral health continuum of care, providing inpatient psychiatric care to adults in nine of its state psychiatric hospitals. The state hospitals serve people with various mental health (MH) needs, including forensic patients who have been determined to be incompetent to stand trial or acquitted as not guilty by reason of insanity, and civil patients who are at risk of harming themselves or others or at risk of significant deterioration. HHSC is working to transform and modernize the delivery of inpatient psychiatric care and services at the state hospitals through several major initiatives, including expanding state hospital capacity and renovating and replacing the state hospital infrastructure. In addition, HHSC has prioritized efforts to transform the delivery of inpatient psychiatric forensic care and services by implementing strategies that achieve treatment and operational efficiencies and change.*

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### State Hospital System Initiatives

The SHS is implementing initiatives that will improve the efficiency and quality of the delivery of forensic services within the SHS while enhancing collaboration with external stakeholders. As described below, these initiatives use a variety of strategies that have direct and/or indirect impacts on the SHS's waitlist and/or forensic patient lengths of stay.

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### Collaboration and Coordination

#### *Waitlist and Admissions Management*

Collaborating with stakeholders across the behavioral health and justice continuum of care to actively manage the forensic waitlist to:

- identify individuals committed to the SHS who may benefit from alternative dispositions [e.g. individuals with neurocognitive disorders (dementia), Intellectual and Developmental Disabilities (IDD) diagnoses, medical comorbidities, or found not likely to restore within the foreseeable future], and
- educate, coordinate and provide technical assistance, including the evaluation of cases, to jail staff, district attorneys, defense counsel, and the judiciary, as needed.

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#### *Jail In-Reach Learning Collaborative*

Educating and collaborating with external stakeholder community-based teams to support active forensic waitlist monitoring of individuals awaiting in jail for state hospital admission and court-ordered competency restoration through:

- clinical consultation services that may assist with psychiatric stabilization,
- trial competency re-evaluations in the event of immediate restoration while awaiting state hospital transfer,
- legal education on options for alternative case dispositions, and
- enhanced continuity of care following an individual's restoration to competency and return to jail to prevent clinical decompensation and unnecessary rehospitalization.
- Our Partners: Local mental Health Authorities, Local Behavioral Health Authorities, judges, prosecutors, defense attorneys, sheriffs, jail administrators, jail psychiatric providers, and the Judicial Commission on Mental Health's Community Diversion Coordinators across 13 counties.

# ELIMINATE the WAIT

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## Enhancing the Delivery, Quality, and Efficiency of Competency Restoration Services

### *Competency Restoration Curriculum Standardization*

The SHS is developing a simplified and standardized competency restoration curriculum for use at all state hospitals to improve treatment efficiencies and patient movement through the competency restoration process.

### *Outpatient Management Plan Quality Improvement Initiative*

The outpatient management plan (OMP) is a document presented to the court that is used to prescribe the services, supports and requirements a patient must adhere to when transitioning from the SHS to the community. The SHS has developed a simplified and standardized OMP to improve the quality of the plans so that a greater number are approved by the court on the first submission.

### *Trial Competency Examination Quality Improvement Initiative*

To enhance how trial competency evaluations (TCE) are conducted in the SHS, this initiative includes:

- developing and implementing a standard report form that allows for the SHS to extract necessary forensic data found in the TCEs,
- developing an enhanced pool of qualified forensic evaluators in the SHS by implementing an evaluator registry, and
- implementing a TCE peer review process to improve the quality of TCEs completed in the SHS.

### *State Hospital System Forensic Treatment Data Enhancement*

The SHS has been implementing mechanisms for reporting and collecting accurate forensic-related data, including data from a standardized clinical screening of competency, to help make data-informed decisions and develop data-informed interventions for the continuous quality improvement efforts in the delivery of forensic treatment services.

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## Additional Resources:

[Outpatient Management Plans: Creating a Statewide Approach for Successful Not Guilty by Reason of Insanity \(NGRI\) Transitions to Community Living \(webinar\)](#)

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## HHSC Contact:

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# ELIMINATE the WAIT

## Next Steps

Over the next year, the JCMH and the HHSC will:

- Develop additional resources to support the Eliminate the Wait Campaign.
- Offer Sequential Intercept Model Mapping to communities who seek to better understand how individuals with mental and substance use disorders come into contact with and move through the criminal justice system, with the goal of identifying resources and gaps in services at each intercept and developing local strategic action plans.
- Offer targeted technical assistance to stakeholders who seek support in implementing the Eliminate the Wait checklists.

For more information on how to get involved, visit <http://texasjcmh.gov/> & contact [forensicedirector@hhs.texas.gov](mailto:forensicedirector@hhs.texas.gov).

