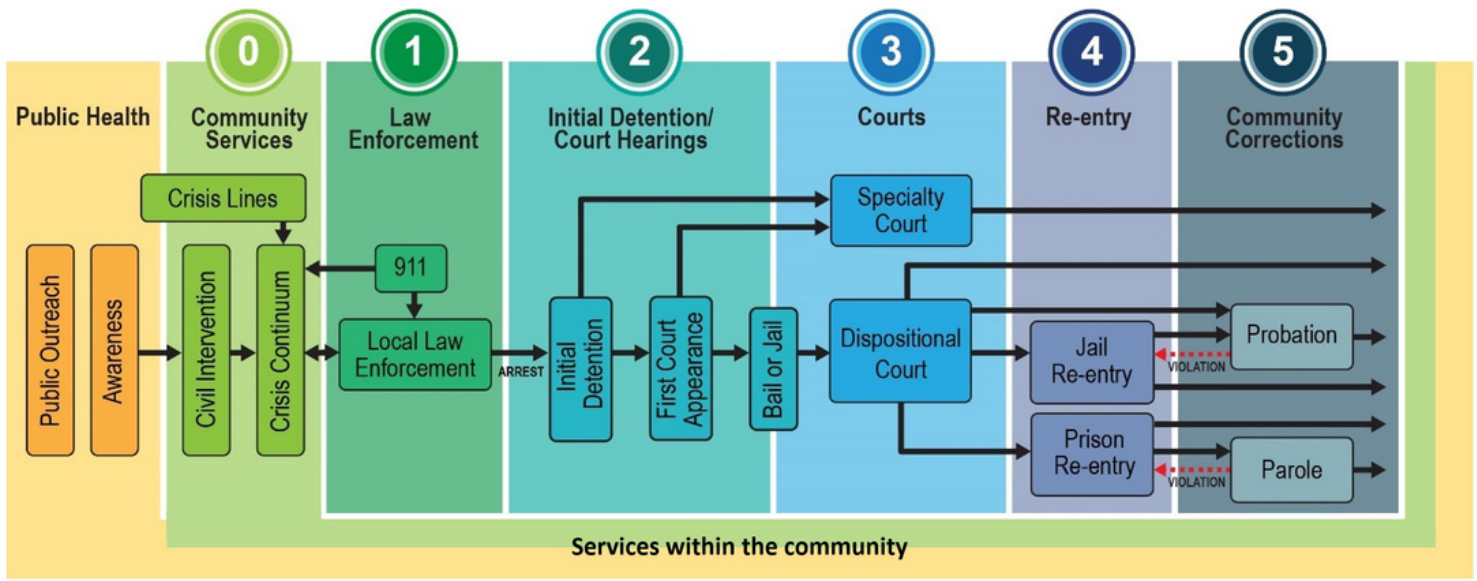




TEXAS COUNTY MENTAL HEALTH LAW PLAN

Checklist



Texas County Mental Health Law Plan Checklist Key

Throughout this Checklist, several acronyms and abbreviations are used. They are as follows:

APOWW	Apprehension by a Peace Officer Without a Warrant
CCP	Code of Criminal Procedure
CR	Competency Restoration
CRS	Competency Restoration Services
ED	Emergency Detention
FACT	Forensic Assertive Community Treatment
HIPAA	Health Insurance Portability and Accountability Act
ICF/IID	Intermediate Care Facilities for Individuals with an Intellectual Disability
IDD	Intellectual and/or Developmental Disability
JBCR	Jail-Based Competency Restoration
JCMH	Texas Judicial Commission on Mental Health
LBHA	Local Behavioral Health Authority
LIDDA	Local Intellectual and Developmental Disability Authority
LMHA	Local Mental Health Authority
LMHP	Licensed Mental Health Professional
MH	Mental Health
MI	Mental Illness
OCR	Outpatient Competency Restoration
OPC	Order of Protective Custody
OSAR	Outreach Screening Assessment and Referral
SH	State Hospital
SIM	Sequential Intercept Model
SUD	Substance Use Disorder
TCIC	Texas Crime Information Center
TCOOMMI	Texas Correctional Office on Offenders with Medical or Mental Impairments
TDCJ	Texas Department of Criminal Justice
TLETS CCQ	Texas Law Enforcement Telecommunications System Continuity of Care Query

RED TEXT Entries written in red text in the checklist are either specifically authorized or required by law; following the practice in red is key to comply with mental health law.

BLACK TEXT Entries written in black text in the checklist are best practices. While not legally required, these practices are suggested to ensure the best possible outcomes.

Intercept: Public Health

Cross-Systems Collaboration

- As a judge, have I gathered key stakeholders to regularly meet for improved communication regarding diversion?
 - Do we have quarterly systems-review meetings?
 - Do we have weekly or bi-weekly case-management meetings?
- Are we using local data to review our outcomes, including data collected by the jail (booking, medical, and psychiatric data)?
- Are the agencies and individuals listed in [H&S Code § 614.017](#) accepting and disclosing information about defendants with MI/IDD for the purposes of continuity of care, including jails, LMHAs, attorneys, judges, probation, TDCJ, and others?
- Are stakeholders aware that HIPAA permits disclosure of protected health information if the disclosure is required by state law such as [H&S Code § 614.017](#) above? [45 CFR §160.203](#) (This exception to HIPAA does not apply to information that would identify an individual as having received or applied for treatment for alcohol and substance use treatment programs unless it's for medical emergencies, research, or court-ordered.) [42 CFR §2](#)
- Is there an agreement to maintain confidentiality signed by all stakeholders in the case-management meetings who receive allowable protected health information?

Education and Awareness

- Do I require training for the prosecutors and defense bar on best practices for clients with MI/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?
- Does my Court utilize a list of attorneys with specialized knowledge in MH/IDD/SUD for complex cases?
- Do I have a separate fee schedule to pay attorneys with specialized MH/IDD/SUD knowledge more for handling these types of cases?
- Are all the judges and attorneys in my community aware of the diversion options available pre-booking, post-booking, and upon release?
- Do we educate about, or have a place to locate a list of, the diversion options available in our community? See [JCMH Resources and Innovations Map](#).
- Do we educate about the requirement in the Health and Safety Code to serve people in the least restrictive appropriate setting? [H&S Code § 571.002 and 571.004](#)
- Do we educate stakeholders regarding overarching principles of interagency collaboration, individualized strengths-based care that is trauma-informed and evidenced-based, cultural competency, individual and family involvement, community-based services, and accountability?

Intercept 0: Community Services

Pre-Crisis Community Services

- Are the courts in my county in contact with the LMHA/LIDDA/LBHA and the OSAR for substance use screening and treatment? Do judges have a direct contact?
- Has my county completed Sequential Intercept Model Mapping to identify resources?

Crisis Services

- Does my community have:
 - Accessible crisis lines?
 - A crisis intervention team?
 - A FACT team or other jail diversion team?
 - A mobile crisis response team?
 - A mental health co-responder program?
- Is a list of available crisis services with direct contacts accessible to courts and stakeholders?

Assisted Outpatient Treatment (AOT) Court

- Does our county have an Assisted Outpatient Treatment Court?
 - If not, have any judges with probate jurisdiction started the process for creating one?
 - If so, do we have standardized procedures to receive referrals?
 - Are the procedures written and accessible?

Emergency Detention

- Is emergency detention available in my county when it is needed? Is this (24/7)?
 - Are stakeholders aware that ED can be carried out with a warrant (judge) or without a warrant (through Law Enforcement—APOWW)?
- Does law enforcement perform warrantless emergency detentions (APOWW)? [H&S Code § 573.001](#).
 - If not, is there a plan to begin APOWWs with one or many local agencies?
 - Does law enforcement need additional training to perform warrantless EDs?
 - If so, are outcomes tracked and reported?
- Does my county use emergency detentions with a warrant? [H&S Code § 573.012](#).
 - Is a magistrate available 24/7 to review ED applications and electronically sign the order?
 - Who oversees the availability of magistrates for ED?
 - Has the judge with probate jurisdiction signed an administrative order authorizing another judge or magistrate to review the warrant application? [H&S Code § 573.012\(g\)](#).
 - Are judges accepting all electronic applications for a warrant from physicians and LMHPs employed by the LMHA? [H&S Code § 573.012\(h\)](#).

Order of Protective Custody

- Do clerks know who to send filed requests for an application for temporary mental health services and a request for an OPC when the judge with probate jurisdiction is unavailable?
- Has the judge with probate jurisdiction signed an order to that effect? [H&S Code § 574.021](#)

Intercept 1: Law Enforcement

Law Enforcement Must Divert When Appropriate

- Does law enforcement know 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? [CCP art. 16.23\(a\)](#). This provision applies if:
 - a treatment center is available;
 - diversion is reasonable;
 - the offense is a non-violent misdemeanor; and
 - the mental health or substance abuse issue is suspected to be the reason for the offense.
- Does law enforcement work with the LMHA to respond to 988 calls, 911 mental health calls, and/or crisis hotline calls?
- Does law enforcement have a Crisis Intervention Team or a Mental Health Officer?
- Does my community have a pre-arrest diversion center or policies?

Warrantless Emergency Detention

- Does law enforcement know they have discretion to make a warrantless apprehension for an emergency detention if the statutory criteria are met, rather than choosing to make an arrest? (See [H&S Code § 573.001\(a\)](#)).
- Does law enforcement know their belief that an individual has met criteria for an emergency detention may be based on the representation of a credible person, the person's conduct, or the circumstances under which the person is found? [H&S Code § 573.001\(c\)](#).
- Does law enforcement know that "[a] person who participates in the examination, certification, apprehension, custody, transportation, detention, treatment, or discharge of any person or in the performance of an emergency detention who acts in good faith, reasonably, and without negligence is not criminally or civilly liable for that action."? [H&S Code § 571.019\(a\)](#).
- Are officers who transport a person to the facility under a ED warrant allowed to leave the facility transferring the person to the facility and providing the correct documentation per [H&S Code § 573.012\(d-1\)](#)?

Arrest

- Do local law enforcement policies empower officers to use their discretion to not make an arrest? In Texas, arrest is only mandatory when violating certain court orders or bond conditions according to [CCP art. 25.07](#) (family violence, child abuse or neglect, sexual assault or abuse, indecent assault, stalking, or trafficking). In other words, with most offenses, arrest is discretionary.
- Does law enforcement know that in lieu of arresting a person with IDD who lives in a group home or ICF/IID, a peace officer may release him or her at the person's residence if the officer: (i) believes confinement of the person in a correctional facility as defined by section 1.07 of the Texas Penal Code is unnecessary to protect the person and the other persons who reside at the residence; and (ii) made reasonable efforts to consult with the staff at the person's residence and with the person regarding the decision? [CCP art. 14.035](#).

Intercept 2: Initial Detention/Court Hearings

Jail Diversion

- Is our jail using the TLETS CCQ to identify defendants who have received prior state mental health services to the jail may continue the mental health care? [H&S Code § 613.013](#).
 - If there is a positive alert, is the LMHA timely notified?
 - Does the LMHA know who is responsible for, and how they receive, this notification?
- Is my LMHA/LBHA/LIDDA involved in initial detention?
 - Does a jail liaison have contact with my LMHA?
 - Does the LMHA connect defendants to psychiatric, IDD, and SUD services?
 - Does the LMHA provide contracted jail-based treatment services?
- Do defendants have access to 24/7 tele mental health and telehealth services? [Gov't Code § 511.009\(a\)\(19\)](#). 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 treatment?
- Are defendants being provided their prescription MH medications? [Gov't Code § 511.009\(d\)](#).
- If multiple medical and psychiatric providers serve defendants, are they connected and communicating via a single medical record to ensure continuity of care and informed treatment?

Magistration

- Do the Magistrates 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? [CCP art. 16.22\(a\)\(1\)](#).
- Are Magistrates holding [CCP art. 15.17](#) Hearings? Does the hearing occur within 48 hours of arrest?
- Do the Magistrates order the 16.22 Interview when reasonable cause is found (from the jail admin or from an alternative source)? [CCP art. 16.22](#).
- Are Magistrates aware they may order 16.22 Interviews for people accused of Class C Misdemeanors, according to a new revision to the law? [CCP art. 16.22](#).
- Does the Magistrate send copies of the Collection of Information Report (16.22 Report) to the defense counsel, prosecutor, trial court with jurisdiction, Sheriff, and personal bond office/pretrial supervision office? [CCP art. 16.22\(b-1\)](#).
- Does the magistrate send copies of the 16.22 order and report to the County/District Clerk's office for inclusion in monthly mandatory reporting to the Office of Court Administration? [Tex. Admin Code 171.2](#)
- Are my County/District Clerks educated on the 16.22 process and why their duty to report the number of reports to OCA is imperative? [Tex. Admin Code 171.2](#).
- Have I, or has my county, developed a process for effective and efficient ordering, collection, distribution, 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 an attorney with training and experience on MH and IDD and related legal issues?
- Is a defendant's 16.22 assessment considered for bail, bond conditions, appointment of counsel, treatment, punishment, and probation conditions? [CCP art. 16.22\(c\)\(1\)-\(5\)](#).

MH Bond

- Our judges have a procedure to ensure that applicable defendants are released on personal MH bond so long as certain conditions are met, the person is not charged with and has not been previously convicted of certain violent offenses, and no other good cause to deny is shown. [CCP art. 17.032](#).
- Is my county using mental health personal bonds [CCP art. 17.032](#) to the fullest extent? Have we considered if our mental health bond conditions help or impede access to mental health treatment?
- Are our Judges and Attorneys educated on the nuanced differences between [CCP art. 17.03](#) and [17.032](#)?
- Is the court in contact with pretrial services and the LMHA court liaison to make sure bond conditions are tailored to this defendant's particularized needs as someone with MI?
- Are connections with the LMHA being utilized to find treatment, placement, or services for defendants at the outset of setting bond?
- Does my county have a procedure or LMHA court liaison contact information to help attorneys coordinate the creation of re-entry plans for their clients prior to release on bond? Do the developed plans include treatment, support systems, medications, and social services?

Intercept 3 Courts

Diversion

- Are diversion alternatives being considered for individuals when appropriate? Are diversion alternatives well known in the county? If not, is there a point of contact for this information?
- Are risk assessments utilized in the pretrial process?
- Is our pretrial office assisting clients with MI and IDD with accessing treatment and working toward diversion?
- Does the county have a process for pretrial diversion by “Dismiss & Transfer?” i.e., transferring cases to alternative courts for court-ordered outpatient mental health services with or without dismissal? [H&S Code Ch. 574; CCP art. 16.22\(c\)\(5\).](#)
- Does the county have a process to ensure the defendant has current, necessary medications to assist with recovery and stabilization?
 - Is there a process set out to re-evaluate for competency after stabilization is reached on medications for 46B defendants? [CCP art. 46B.0755.](#)
- Are stakeholders trained on the court-ordered medication legal process? [H&S Code § 574.103-.106; CCP art. 46B.086.](#)
- Does my county have a streamlined process for conducting the civil medication hearing and then the criminal medication hearing, for a 46B defendant, as necessary?
- Are the probate courts and criminal courts working together to expedite the required two-step hearing process? [H&S Code § 574.103-106](#) and [CCP art. 46B.086.](#)

Mental Health Courts

- Is my County required to have a Mental Health Court Program? [Gov't Code § 125.005\(a\).](#)
 - Counties with a population greater than 200,000 are required to establish a mental health court program unless the county applies for and does not receive state or federal funding for such a program.
- Does my county have a mental health court program as defined by [Gov't Code § 125.001](#)?
 - If not, have I consulted with the JCMH on how to determine the need and capacity to create a mental health court program?
 - If yes, is the referral process 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 our mental health court programs successfully utilizing peers to leverage prior experience and trust into success for current defendants?
- Are we measuring and reporting outcomes to effect change?

Is Competency Restoration Necessary and Feasible?

- Do our judges reserve competency restoration for cases where the State has a strong interest in prosecuting?
- Does our county have an open dialogue in stakeholder collaborations 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 county educate on when treatment instead of CRS may be effective?
- Does my county have a process, or communication plan, to provide appropriate defendants with mental health services and a treatment plan in lieu of CRS?

Consider Alternatives to State Hospital if Competency Restoration is Necessary

- Do our Judges actively consider OCR or JBCR in lieu of inpatient CR? [CCP art. 46B.071](#).
 - Is OCR/JBCR 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?
 - Do any nearby communities have OCR or JBCR programs we could access?
 - Is education available on when OCR or JBCR is appropriate?
 - Is the contact information for an OCR/JBCR consultation readily accessible?
- Does my county educate stakeholders that CRS are not a substitute for comprehensive MH treatment but rather minimal treatment and mostly legal education?
- Does my county have a policy regarding CRS for misdemeanor cases, specifically do we consider treatment or diversion alternatives first, and using competency evaluations only as a last resort when alternatives are not available or appropriate?
- Upon an indication of restoration, have I approved funding for the defendant to be re-evaluated after stabilization to see if they are still incompetent? [CCP art. 46B.0755](#).
- Does my county have regular stakeholder meetings for status updates on all 46B cases? Does this meeting explore alternatives or diversions for each defendant as they await transport to the State Hospital? Does this meeting provide status updates for defendants currently receiving treatment at the SH or other location?

Create Efficient Court Policies for People who Receive Inpatient Competency Restoration Services

- Have I assigned one point-of-contact, via electronic communication, between my Court and the State Hospital?
- Has my county sent a letter annually to the State Hospital notifying them of my point-of-contact, who should receive all communication (name, email address, fax, and phone)?
- Have we established an efficient process for communicating with the State Hospital using email?
- Do I consult with my LMHA if I am having difficulty in communicating with the State Hospital?
- 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 State Hospital? See [H&S Code § 574.106](#) (MI); [§ 592.156](#) (IDD); [CCP art. 46B.086](#).
- If the Defendant 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 the State Hospital? Do I urge the Defense and State Attorneys to continue to work on the case while waiting for the individual to return from State Hospital?
- Do I coordinate bench warrants and transportation of multiple defendants to and from the State Hospital? Is the person set on a docket quickly upon returning from the State Hospital?
- To prevent decompensation, does my court set cases preferentially when an individual has been restored to competency under [CCP art. 46B.084](#) and returned to my county? [CCP art. 32A.01](#). 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](#).

Intercept 4: Re-entry

- Does our county connect defendants to LMHA/TCOOMMI/OSAR services?
- Does our county connect defendants to prison/jail re-entry services, if applicable?
- Does my county connect defendants to community-based re-entry services?
- Are peers, peer services through the LMHA, consumer operated services, or recovery community organizations used to assist defendants with re-entry into the community?
- Is a defendant's 16.22 assessment considered for probation conditions? [CCP art. 16.22\(c\)](#).
- Does my county have post-conviction specialty courts or dockets?
 - If yes, is my referral process in written form and shared with referral sources?
- Does my county have a procedure to facilitate the creation of individualized re-entry plans prior to re-entry? Do the developed plans include treatment, support systems, medications, and social services?
- Is prescription continuity ensured throughout an individual's progress through the justice system? [Gov't Code § 511.009\(d\)](#). Is there a plan for continuation for how the person will access medications upon re-entry into the community?
- What is done to facilitate benefit (re)enrollment upon re-entry to the community?
- Are wraparound services coordinated for individuals prior to re-entry to the community?
- What community engagement strategies are provided upon re-entry (e.g., employment, education, or pro-social activities)?
- Is there a need for court-ordered medications? Are stakeholders aware of the process for court-ordering medications?

Intercept 5: Community Corrections

- What screening and treatment/service coordination does probation conduct for individuals with MI/IDD/SUD? Have I connected the defendant to LMHA/TCOOMMI/OSAR services?
- What pro-social behaviors or wellness indicators are monitored by supervision agencies for housing, health, peer support?
- Does our county connect people on parole supervision to supports and services?
- Do our courts request that outcomes are reported to the courts at a reasonable frequency to support the success of the parolee in the community?
- Is prescription continuity ensured throughout individuals' progress through the justice system?
- What policies and procedures does my county utilize to ensure people on probation supervision receive specifically tailored probation conditions?
 - Does my county have a procedure to facilitate the creation of individualized re-entry plans prior to re-entry?
 - Do the developed plans include treatment, support systems, medications, and social services?
 - Are defendants' 16.22 assessments considered for treatment, punishment, and probation conditions? [CCP art. 16.22\(c\)](#).
 - Do these conditions foster success and recovery, or do they create additional barriers to success?
 - Do we connect people on probation with accessible services and support?
 - Does our county provide connections to peer organizations, peer services, consumer operated services, or recovery community organizations to promote recovery and success on probation?
 - Are probation conditions entered in TCIC per [CCP art. 17.50](#)?
- Does my county have post-conviction specialty courts or dockets?
 - If yes, is my referral process in written form and shared with referral sources?
 - If we do not have one, have we determined the need and capacity to create a such a program?