

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?](#)

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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://texasjcmh.gov/media/lbrdg1tk/jcmh-adult-bench-book-3rd-edition.pdf>
- 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* (4th ed. 2015), 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>.

