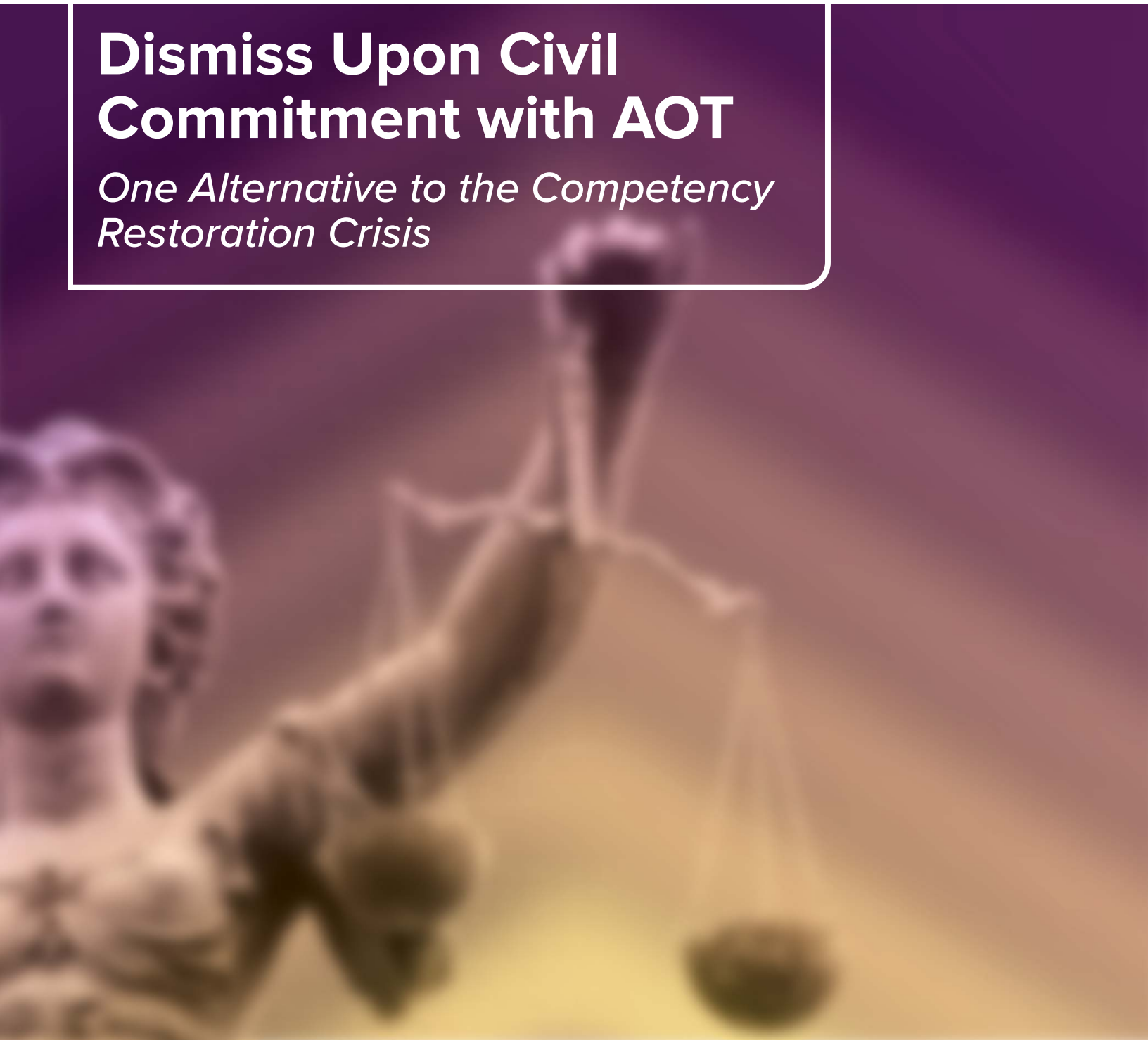
Treatment Advocacy Center

Dismiss Upon Civil Commitment with AOT

One Alternative to the Competency Restoration Crisis



A HANDBOOK FOR ADVOCATES AND IMPLEMENTERS

March 2024

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COMPETENCY RESTORATION CRISIS

Under the Sixth Amendment of the Constitution, a criminal defendant has the right to understand the nature and consequences of the proceedings against them and to assist in their own defense. When there is reason to question a defendant's competency to exercise these rights — typically due to mental illness or intellectual disability — the court will order a competency evaluation.

If the evaluator finds the defendant incompetent to stand trial, the state must restore competency before the case can proceed. If the IST finding is due to mental illness, the defendant is typically committed to a state psychiatric hospital for restoration efforts.

Hospitalization for purposes of competency restoration should not be confused with therapeutic inpatient treatment, as they each serve distinct goals. Inpatient treatment is a vital part of the continuum of psychiatric care and is used to help achieve long-term wellness and recovery from symptoms of mental illness. Along with medication, this involves working with the patient to foster continued engagement with treatment after discharge. Because competency restoration serves the much more limited, short-term goal of preparing the defendant to face trial, restoration "treatment" is usually limited to medication and basic education on the criminal court process. The purpose of the hospitalization is to serve the interests of the criminal legal system — not the patient.

Most defendants requiring competency restoration have been charged with minor, nonviolent offenses.[1] In these cases, it is common for criminal charges to be dismissed when the period of attempted restoration reaches the maximum sentence for the charged offense.

When restoration efforts are unsuccessful, the charges are typically "dismissed without prejudice," meaning the prosecutor reserves the right to re-file the charges in the future. What happens next depends on whether the person is believed to meet the state's legal standards for civil commitment to hospital care. Those who are evaluated and found to meet inpatient criteria are retained in hospitals subject to ordinary civil commitment procedures, while those found not to meet criteria for civil retention are released back into the community — often with little or no monitoring or clinical supports.[2]

In recent years, there has been a dramatic increase in the number of nonviolent defendants found to require competency restoration. This has led to more and more state psychiatric beds set aside to serve this population and ever fewer beds available for those in psychiatric crisis who are not criminally involved.[3]

There are many potential approaches to reversing this worrying trend, and jurisdictions must be open to embracing a number of strategies simultaneously. One approach to consider is assisted outpatient treatment. AOT is a civil court procedure that helps ensure a person with severe mental illness receives treatment while being monitored in the community. In some states, laws may need to be clarified to facilitate the use of AOT as an alternative to competency restoration.

The percentage of admissions in which the patient was criminally involved at all state hospitals increased from **7.6% in 1983** to **36% in 2012** and to approximately **58% in 2014**. Competency restoration cases make up the largest proportion of forensic patients.[4]

Policy Implications

Using state hospital beds to restore individuals to competency who do not present a public safety risk greatly hinders the mental health system's ability to treat patients who are not criminally involved and who may be at risk of harm to themselves or others.

In many jurisdictions, the increasing use of inpatient competency restoration is forcing IST defendants to wait in jail for weeks, months, or even years for beds to open up in state hospitals. This is exacerbating a national jail overcrowding crisis. In 2016, an estimated 90,000 jail inmates in the United States were pretrial defendants with SMI who had been found IST.[5] Holding mentally ill defendants in jails with inadequate clinical services leads to increased risk for victimization, self-harm, and suicide.[6]

COST CONSIDERATIONS

Average cost per day in a U.S. jail:
$85.77[7]

Average cost per day in a hospital:
$1,800[8]

STATE RESPONSES TO GROWING CRISIS

Many states are experimenting with alternative responses to the growing number of defendants who do not present a public safety risk and who are found IST. Some are dismissing charges immediately upon an IST finding, to avoid the obligation of competency restoration. Others are relying increasingly upon jail or community-based restoration programs rather than the state hospital system.[9]

States Encourage Civil Commitment with AOT as an Alternative in Certain Cases

In 2019, the Texas Legislature passed S.B. 362 authorizing the use of outpatient civil commitment, including AOT, in the Code of Criminal Procedure "if the offense charged does not involve an act, attempt, or threat of serious bodily injury to another person." In 2021, the Ohio General Assembly passed S.B. 2, which provided clarification around existing law to make dismissal upon referral to civil commitment more palatable to prosecutors for certain nonviolent offenders.

In both cases, the change in law gave entities with an interest in advocating for "dismiss upon civil commitment with AOT" — namely, state mental health departments struggling with an ever-increasing forensic population, mental health advocates frustrated by the sheer number of people caught in the revolving door, and family members with loved ones sitting in jail awaiting

competency restoration — an opportunity to raise awareness about this alternative option for certain offenders. Florida and Nevada have also clarified that civil commitment with AOT is an acceptable alternative to outright dismissal of charges in their state statutes. Similar legislation is pending in other states, including California and Utah.

DISMISS UPON CIVIL COMMITMENT WITH AOT

Dismiss upon civil commitment with AOT is a term used when referring to postarrest diversion to AOT. It is a tool in the toolbox for addressing a segment of the ever-growing forensic population — those offenders with SMI who have a history of criminal legal involvement due to their lack of engagement in treatment but who do not present a public safety risk. Efforts to restore these individuals in the past have been unsuccessful, so typically either their cases are dismissed, and they return to the community only to reoffend, or their charges are elevated to a more serious offense in the belief that they will receive needed treatment in jail or prison.

Dismiss upon civil commitment with AOT is the practice by which criminal charges are dismissed prior to a competency determination or in lieu of competency restoration and held in abeyance while an application for civil commitment is filed in civil court. Once a civil commitment order has been issued, the individual is released to an AOT program for community treatment and monitoring, usually after a short period in the hospital for stabilization. In most states, AOT orders can be continued for as long as needed or until the person voluntarily engages in treatment.

Assisted Outpatient Treatment

AOT — known by a variety of other names from state to state, including "outpatient civil commitment" and "mandatory outpatient treatment" — is a tool in the toolbox for civil courts and mental health systems to work collaboratively to help individuals with SMI caught in a cycle of repeat hospitalizations, homelessness, and incarcerations. Individuals who benefit from AOT have a history of inconsistent engagement with treatment, often due to diminished awareness of the need for treatment. AOT aims to motivate and assist individuals with SMI to engage in treatment and ensure that treatment providers work diligently to keep them engaged in effective treatment.

AOT is intended to maximize the safety and well-being of both the participant and the public by averting, or at least diminishing, the consequences of treatment nonadherence, including criminal legal involvement.

When implemented effectively, AOT increases treatment adherence, which translates into reduced use of hospitals, crisis services, and jails, improved quality of life for individuals with mental illness, increased public safety, and overall reduced costs to society.[10]

A judge usually orders AOT upon an individual's discharge from a hospital or jail, but in many states, a judge can order it for individuals who are living in the community if they have a recent history of cycling in and out of the hospital or jail. The AOT participant is court-ordered to follow

an individualized treatment plan in the community for a specific period, and the local mental health system monitors adherence to the treatment plan. If the AOT participant does not adhere to treatment, the court has several options, including modifying the treatment plan, ordering the participant to appear in court, and ordering the participant to be evaluated for possible hospitalization. Once the participant demonstrates voluntary engagement in treatment, the court dismisses the AOT order or allows it to expire, and care continues.

Studies show that AOT can dramatically improve treatment outcomes and substantially reduce the likelihood of repeat hospitalization and criminal justice involvement for its target population.

OPERATIONALIZING DISMISS UPON CIVIL COMMITMENT WITH AOT

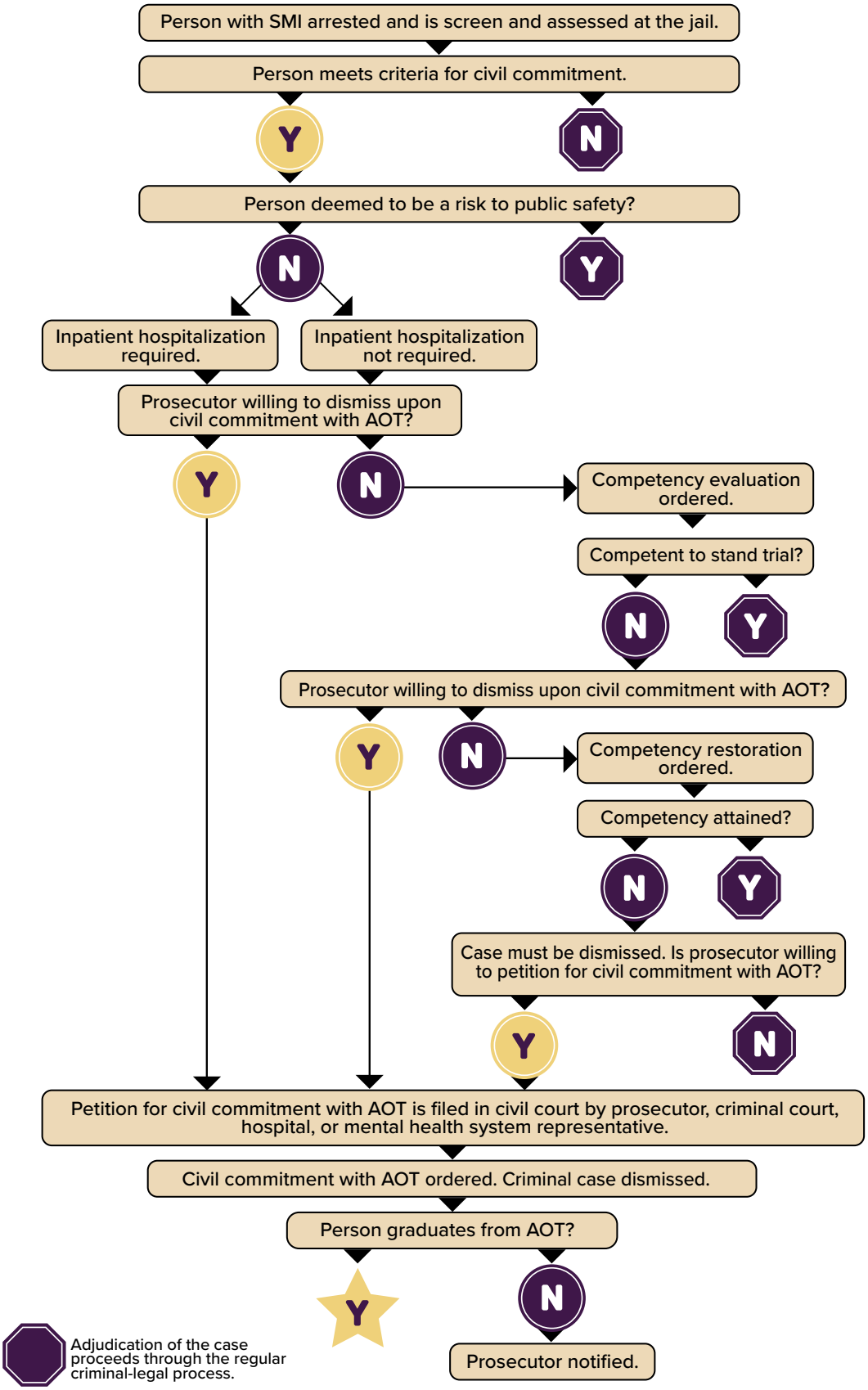
In many instances in which a person with untreated mental illness is involved in criminal behavior that does not present a public safety risk, the most effective response is to immediately transport the individual to a crisis center for evaluation and referral to treatment. However, when there is a victim involved, this resolution may not be regarded as adequate, and an arrest is made.

Fortunately, there are other opportunities to divert the individual away from the criminal legal system, postarrest. The next opportunity is following the mental health screen and clinical assessment typically conducted at the jail. If the assessment indicates that the severity of the illness is such that the person appears to meet criteria for civil commitment, steps should be taken to have the person immediately transferred to the hospital for stabilization and treatment. Such a scenario ought to trigger consideration by the prosecutor to file a petition for civil commitment with AOT while taking steps to dismiss the case in criminal court.

Sometimes a prosecutor may decide not to refer a case for civil commitment until after a full competency evaluation has been completed. Once supplied with additional information about the defendant's current condition, history of mental illness, the expected time needed to restore competency, wait times for such services, and so forth, the prosecutor may determine at this juncture that it is more prudent to file a petition for civil commitment and dismiss the criminal case.

In the event that the case is still not referred for civil commitment, and the defendant is not restored to competency in the amount of time permitted by law, the prosecutor MUST dismiss the criminal charges. However, the option to file a petition for civil commitment with AOT is still available.

DISMISS UPON CIVIL COMMITMENT WITH AOT PATHWAYS



BENEFITS OF DISMISS UPON CIVIL COMMITMENT WITH AOT

- Avoids extended hospital stays for competency restoration and frees up state hospital beds for those in need of hospital level of care.[11]
- Offers an alternative to well-intentioned prosecutors and judges who otherwise may initiate the competency process as a means of providing defendants with needed treatment.[12]
- Reduces time in jail and the potential for victimization.[13]
- Extricates defendants with untreated SMI from the criminal legal system and leads to better outcomes.[14]
- Helps prevent future criminal behavior.[15]
- Helps ensure that those with untreated SMI receive long-term treatment.[16]
- Reduces risk of lawsuits for violating the constitutional rights of pretrial defendants, thus saving states millions of dollars in penalties.[17]
- Saves money by reducing the need for costly restoration services.[18]
- Does not require legislation to put in practice. However, legislation can be helpful when it mandates, clarifies, and/or incentivizes the use of dismiss upon civil commitment with AOT.[19]

POLICY RECOMMENDATIONS

Recommendation 1 Incentivize the establishment and implementation of effective AOT programs that adhere to the nine essential elements of AOT programs delineated in *Implementing assisted outpatient treatment: Essential elements, building blocks and tips for maximizing results.*[20]

Recommendation 2 Encourage prosecutors to exercise their inherent discretion to dismiss criminal charges for IST cases to civil court for hospitalization and then to AOT for ongoing treatment and monitoring when the person does not present a public safety risk.

Recommendation 3 Seek legislation that mandates, clarifies, and/or incentivizes the use of civil commitment with AOT as one alternative to the prosecution of eligible IST cases. See sample statutes and pending legislation below.

SAMPLE STATE STATUTES

The specific options available to police, prosecutors, and judges in criminal cases vary by jurisdiction, but every state affords the opportunity to not pursue charges against a defendant. However, because a dismiss upon civil commitment with AOT policy for offenders who do not present a public safety risk and who are unlikely to be restored to competency is often in both the community's and the defendant's best interests, many states are modifying their statutes to

encourage prosecutors and criminal courts to consider this alternative. To this end, states have made changes to their statutes to incentivize, clarify, and simplify the practice, including the following:

- Prohibit inpatient competency restoration for low-level, nonviolent offenders.
- Clarify the procedure for referring cases to civil court and dismissing criminal charges.
- Establish a mechanism for communication and sharing of records between the criminal and civil courts.
- Clarify in both the Health and Safety Code and the Code of Criminal Procedure that criminal courts have the authority to refer a case to civil court and dismiss criminal charges when the act charged does not involve bodily injury.

Florida

S.B. 12 (passed 2016): According to the Eleventh Judicial Circuit, S.B. 12 provided the authority for county court criminal judges to use AOT for individuals charged with misdemeanor offenses. The target population to benefit from this legislation are individuals with histories of repeated admissions to mental health treatment services in the criminal justice and acute care treatment systems who may benefit from court-ordered outpatient treatment services. These individuals have histories of treatment noncompliance and/or refusal to engage in treatment and are unlikely to survive safely in the community without supervision. Individuals who complete AOT can be transitioned into misdemeanor jail diversion to resolve misdemeanor cases. Below are the relevant provisions contained in the law.

(g) The examination period must be for up to 72 hours. For a minor, the examination shall be initiated within 12 hours after the patient's arrival at the facility. Within the examination period, one of the following actions must be taken, based on the individual needs of the patient:

1. The patient shall be released, unless he or she is charged with a crime, in which case the patient shall be returned to the custody of a law enforcement officer;
2. The patient shall be released, subject to subparagraph 1., for voluntary outpatient treatment;
3. The patient, unless he or she is charged with a crime, shall be asked to give express and informed consent to placement as a voluntary patient and, if such consent is given, the patient shall be admitted as a voluntary patient; or
4. A petition for involuntary services shall be filed in the circuit court if inpatient treatment is deemed necessary or with the criminal county court, as defined in s. 394.4655(1), as applicable. When inpatient treatment is deemed necessary, the least restrictive treatment consistent with the optimum improvement of the patient's condition shall be made available. When a petition is to be filed for involuntary outpatient placement, it shall be filed by one of the petitioners specified in s. 394.4655(4)(a). A petition for involuntary inpatient placement shall be filed by the facility administrator.

https://www.flsenate.gov/Session/Bill/2016/12/BillText/er/PDF

Nevada

S.B. 70 (2021) provides that the attorney for the criminal defendant or the district attorney may make a motion to the district court to commence a proceeding for the issuance of a court order requiring AOT of the defendant or the district court to commence such a proceeding on its own motion if the defendant has been found to be (1) not competent, (2) not eligible for inpatient hospitalization, and (3) meeting criteria for AOT.

Sec. 11. 1. A proceeding for an order requiring any person in the State of Nevada to receive AOT may be commenced by the filing of a petition for such an order with the clerk of the district court of the county where the person who is to be treated is present. The petition may be filed by:

(a) Any person who is at least 18 years of age and resides with the person to be treated;

(b) The spouse, parent, adult sibling, adult child or legal guardian of the person to be treated;

(c) A physician, physician assistant, psychologist, social worker or registered nurse who is providing care to the person to be treated;

(d) The Administrator or his or her designee; or

(e) The medical director of a division facility in which the person is receiving treatment or the designee of the medical director of such a division facility.

2. A proceeding to require a person who is the defendant in a criminal proceeding in the district court to receive assisted outpatient treatment may be commenced by the district court, on its own motion, or by motion of the defendant or the district attorney if:

(a) The defendant has been examined in accordance with NRS 178.415;

(b) The defendant is not eligible for commitment to the custody of the Administrator pursuant to NRS 178.461; and

(c) The Division makes a clinical determination that assisted outpatient treatment is appropriate.

https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/7276/Text#

Ohio

S.B. 2 (passed 2021): S.B. 2 directs that defendants who are IST and restorable and have nonviolent misdemeanor offenses be either diverted to the treatment system through probate court or referred to outpatient competency restoration. It includes provisions to provide for the exchange of information between prosecutors and probate courts, and it allows the person to be detained for up to 10 days while the affidavit for mental illness is filed. Below is a summary of the related provisions.

- The bill prohibits a court from ordering a criminal defendant to undergo inpatient competency evaluations at certain facilities operated or certified by the state, unless the defendant is charged with a felony or offense of violence, immediate hospitalization is deemed necessary, or the order is based on a request from the examiner under continuing law.

- The bill enacts a procedure that a hospital chief clinical officer must follow before discharging a mental health patient found IST for one or more specified misdemeanor offenses and who consequently becomes the subject of an Affidavit of Mental Illness initiated by a criminal court or prosecutor.
- The bill prohibits the patient from being discharged from hospitalization before the hospital's chief clinical officer has notified the trial court or prosecutor of the intent to discharge.
- The bill requires that the Affidavit of Mental Illness, used to initiate involuntary mental health treatment using the process of judicial hospitalization, include a space for the petitioner to indicate that the person for whom involuntary mental health treatment is sought is believed to be mentally ill subject to court order.

https://search-prod.lis.state.oh.us/solarapi/v1/general_assembly_134/bills/sb2/EN/05/sb2_05_EN?format=pdf

Section 2945.38 | Competence to stand trial.
(iv) If the defendant has not been charged with a felony offense or a misdemeanor offense of violence, but has been charged with a misdemeanor offense that is not a misdemeanor offense of violence and if, after taking into consideration all relevant reports, information, and other evidence, the court finds that the defendant is incompetent to stand trial, but the court is unable at that time to determine whether there is a substantial probability that the defendant will become competent to stand trial within the time frame permitted under division (C)(1) of this section, the court shall dismiss the charges and follow the process outlined in division (B)(1)(a)(v)(I) of this section.

(v) If the defendant has not been charged with a felony offense or a misdemeanor offense of violence, or if the defendant has been charged with a misdemeanor offense of violence and the prosecutor has recommended the procedures under division (B)(1)(a)(vi) of this section, and if, after taking into consideration all relevant reports, information, and other evidence, the trial court finds that the defendant is incompetent to stand trial, the trial court shall do one of the following:

(I) Dismiss the charges pending against the defendant. A dismissal under this division is not a bar to further prosecution based on the same conduct. Upon dismissal of the charges, the trial court shall discharge the defendant unless the court or prosecutor, after consideration of the requirements of section 5122.11 of the Revised Code, files an affidavit in probate court alleging that the defendant is a mentally ill person subject to court order or a person with an intellectual disability subject to institutionalization by court order. If an affidavit is filed in probate court, the trial court may detain the defendant for ten days pending a hearing in the probate court and shall send to the probate court copies of all written reports of the defendant's mental condition that were prepared pursuant to section 2945.371 of the Revised Code. The trial court or prosecutor shall specify in the appropriate space on the affidavit that the defendant is a person described in this subdivision.

(II) Order the defendant to undergo outpatient competency restoration treatment at a facility operated or certified by the department of mental health and addiction services as being qualified to treat mental illness, at a public or community mental health facility, or in the care of a psychiatrist or other mental health professional. If a defendant who has been released on bail or recognizance refuses to comply with court-ordered outpatient treatment under this division, the court may dismiss the charges pending against the defendant and proceed under division (B)(1)(a)(v)(I) of this section or may amend the conditions of bail or recognizance and order the sheriff to take the defendant into custody and deliver the defendant to a center, program, or facility operated or certified by the department of mental health and addiction services for treatment.

Texas

S.B. 362 (passed 2019): According to the Texas Judicial Commission on Mental Health, legislation was pursued to add a roadmap in the Code of Criminal Procedure for prosecutors and trial court judges, once an Article 16.22 report is received, to release the defendant with mental illness or intellectual disability on bail and refer the defendant by court order to the appropriate court for court-ordered outpatient mental health services under Chapter 574 of the Health and Safety Code. The judge may only do this "if the offense charged does not involve an act, attempt, or threat of serious bodily injury to another person." If the judge enters such an order, the attorney for the state will file an application for court-ordered outpatient services. If defendant complies with outpatient services requirement, on a motion from the state, the court may dismiss the charges pending. If the defendant failed to comply, on the motion from the state, the court will proceed with further commitment proceedings OR with trial. Below are the related provisions:

SECTION 2. Amends Article 16.22, Code of Criminal Procedure, by amending Subsection (c) and adding Subsections (c-1), (c-2), and (c-3), as follows:

(c) Authorizes the trial court, after the trial court receives the applicable expert's written assessment relating to the defendant under Subsection (b-1) (relating to provision of the expert's written assessment to certain parties) or elects to use the results or a previous determination as described by Subsection (a)(2) (relating to a magistrate not being required to collect certain information if an extant determination exists), as applicable, to:

(1) makes no changes to this subdivision;

(2) resume or initiate competency proceedings, if required, as provided by Chapter 46B (Incompetency to Stand Trial), rather than resume or initiate competency proceedings, if required, as provided by Chapter 46B or other proceedings affecting the defendant's receipt of appropriate court-ordered mental health or intellectual disability services, including proceedings related

to the defendant's receipt of outpatient mental health services under Section 574.034, Health and Safety Code;

(3) (4) makes non-substantive changes to these subdivisions; or

(5) if the offense charged does not involve an act, attempt, or threat of serious bodily injury to another person, release the defendant on bail while charges against the defendant remain pending and enter an order referring the defendant to the appropriate court for court-ordered outpatient mental health services under Chapter 574 (Court-Ordered Mental Health Services), Health and Safety Code.

(c-1) Requires an attorney representing the state, if an order is entered under Subdivision (c)(5), to file the application for court-ordered outpatient services under Chapter 574, Health and Safety Code.

(c-2) Authorizes the court, on the motion of an attorney representing the state, if the court determines the defendant has complied with appropriate court-ordered outpatient treatment, to dismiss the charges pending against the defendant and discharge the defendant.

(c-3) Requires the court, on the motion of an attorney representing the state, if the court determines the defendant has failed to comply with appropriate court-ordered outpatient treatment, to proceed under this chapter (The Commitment or Discharge of the Accused) or with the trial of the offense.

https://capitol.texas.gov/billlookup/text.aspx?LegSess=86R&Bill=SB362#

EXCERPTS FROM RELEVANT RESEARCH

Bloom, J. D., Hansen, T. E., & Blekic, A. (2022). Competency to stand trial, civil commitment, and Oregon State Hospital. Journal of the American Academy of Psychiatry and the Law Online, 50(1). https://jaapl.org/content/jaapl/early/2021/12/08/JAAPL.210055-21.full.pdf

"From 2012 to 2019, in four of the five counties with the most CST admissions, 40 percent were for individuals charged with misdemeanors. The misdemeanor population often exhibits factors associated with minor criminal activity, such as homelessness, noncompliance with prior treatment, and a history of denial of illness. Such individuals represent a target population for possible complete diversion out of the criminal justice system and into mental health treatment, either through civil commitment or assisted outpatient treatment, along with sheltered housing and other requisite hospital or

community programs. Each misdemeanor case could be reviewed for possible diversion with a decision made early in a CST hospital stay as to whether the case should continue in the criminal courts or be referred to the civil courts and the mental health system. Obviously, representatives from each side, civil and criminal justice, would need to be involved and capable of making such judgements.

What is needed now is an emphasis on the positive treatment aspects of civil commitment or similar statutes like assisted outpatient treatment, provision of sufficient beds in hospitals to meet population needs, and generally moving back from criminal court confinement to civil commitment and to voluntary mental hospital services. This is the direction that we should follow."

Boutros, A., Kang, S. S., & Boutros, N. N. (2018). A cyclical path to recovery: Calling into question the wisdom of incarceration after restoration. International Journal of Law and Psychiatry, 57, 100–105. https://www.sciencedirect.com/science/article/abs/pii/S0160252717300419

"Given the quality of psychiatric care and the inherent stress of being incarcerated, our question was, 'is it efficient to spend the time and tax dollars on providing necessary treatment to mentally ill with minor offenses so they can stand trial and be sent to jail versus placement in community-based treatment programs?' To answer this question, we reviewed the US literature addressing the alternatives to incarceration (i.e., diversion programs), and the success rate of those programs to minimize re-arrests and future criminal behavior. The studies on the efficacy of diversion programs remain sparse. The limited available studies point to a higher success rate in the ability to treat mentally ill misdemeanor offenders as well as prevent future criminal behavior; however, these programs must be utilized early. Our conclusions are that diversion programs have the potential to reduce recidivism for misdemeanor offenders, but further research needs to be conducted to ascertain the specifics of best practices for implementation of such programs."

Callahan, L., & Pinals, D. A. (2020). Challenges to reforming the competence to stand trial and competence restoration system. Psychiatric Services, 71(7), 691–697. https://doi.org/10.1176/appi.ps.201900483

"There is no doubt that defendants with serious mental illness and neurocognitive and neurodevelopmental symptoms present great challenges to the court, and most want the best outcome for their legal and clinical problems and for society as a whole. When diversion is not an option either because of eligibility restrictions or unavailability of a suitable program, judges might decide to initiate the competence process and hope that treatment is forthcoming. However, this decision allows for an "out of sight, out of mind" scenario that could be to the detriment of the defendant. If all attorneys and judges were to

follow the American Bar Association's guidelines that consider diversion for lower-level offenses, the competence system would be less likely to be used as a tactical tool for defendants facing these types of charges who may never be prosecuted anyway."

Douglas, A. (2019). Caging the incompetent: Why jail-based competency restoration programs violate the Americans with Disabilities Act under Olmstead v. L.C. Georgetown Journal of Legal Ethics, 32, 525–575. https://www.law.georgetown.edu/legal-ethics-journal/wp-content/uploads/sites/24/2019/10/GT-GJLE190027.pdf

"Detaining IST individuals in maximally restrictive facilities, when a viable community-based alternative exists, perpetuates the needless institutionalization of individuals with mental illness and robs IST patients of the benefits of treatment in a more integrated setting. Specifically with regards to IST defendants who would succeed in community placement and are detained without consideration of this potentiality, JBCR [jail-based competency restoration] constitutes disability-based discrimination."

Fuller, D. A., Sinclair, E., Lamb, H. R., Cayce, J. D., & Snook, J. (2017). Emptying the 'new asylums': A beds capacity model to reduce mental illness behind bars. Treatment Advocacy Center. https://www.treatmentadvocacycenter.org/reports_publications/emptying-the-new-asylums-a-beds-capacity-model-to-reduce-mental-illness-behind-bars

"Many states report that the largest category of patients they serve in their hospitals are pretrial defendants who have been found IST. Increasingly, the courts are ruling the waitlisting of these detainees to be illegal. Since January 1, 2014, public agencies and officials in more than a dozen states have been sued or threatened with legal action for violating the constitutional rights of pretrial prisoners."

Gordon, S., Piasecki, M., Kahn, G., & Nielsen, D. (2016). Review of Alaska mental health statutes. Scholarly Works, 970. https://scholars.law.unlv.edu/facpub/970

"At any point during competency restoration, if there is not a substantial probability that the defendant will become competent with treatment within the remaining time allowed by each section, or if the defendant is still found incompetent to stand trial at the expiration of the timeframe listed in each section, the statute should require that the court dismiss the charges against the defendant without prejudice and the provisions of AS § 12.47.110(e) should require the Department of Health and Social Services to initiate inpatient or outpatient civil commitment proceedings or create a discharge plan for the defendant."

Gowensmith, N., Murrie, D. C. (2022). Competence Restoration Amid a Widespread "Competency Crisis." In B. H. Bornstein, M. Miller, & D. DeMatteo (Eds.), Advances in Psychology and Law, Vol. 6 (pp. 215–239). Springer. https://doi.org/10.1007/978-3-031-13733-4_8

> "... in recent history, as more criminal defendants are referred for competence evaluations and found incompetent, the public mental health system, particularly state psychiatric hospitals, struggles to meet increasing demands for competence restoration services. This "competency crisis" requires new approaches from the fields of psychology and law. Systems must increasingly explore new strategies to provide competence restoration, such as shifts towards community-based and jail-based restoration services—or even diversion from the criminal justice system entirely—rather than sole reliance on traditional inpatient psychiatric hospitalization for restoration."

Hansen, T. E., Blekic, A., & Bloom, J. D. (2023). COVID-19, Mink-Bowman, and court-ordered psychiatric services in Oregon. Journal of the American Academy of Psychiatry and the Law Online, 51(3). https://jaapl.org/content/early/2023/08/07/JAAPL.230056-23

> "In civil commitment, there needs to be a parallel critical review of the status of the current program and what is needed to restore a serviceable statute. To some extent this is happening with a current task force on civil commitment sponsored by the Chief Justice of the Oregon Supreme Court. This group, however, seems to be focused on statutory review and not on the restoration of civil commitment services at OSH and in the community. OHA should be heavily involved in the leadership of this review, with a focus on redefining and financing of civil commitment services in community hospitals and step-down units, along with residential and community treatment programs. In addition, support for services related to the use of 14DD and for assisted community outpatient programs can enhance community treatment for involuntary patients."

Hoge, S. K., & Bonnie, R. J. (2021). Expedited diversion of criminal defendants to court-ordered treatment. Journal of the American Academy of Psychiatry and the Law Online, 51(3). https://jaapl.org/content/early/2021/10/05/JAAPL.210076-21

> "Under our proposal, a substantial proportion of such defendants would be diverted formally to a new form of civil commitment early in the criminal process and would thereafter receive care and be managed in treatment systems operated by state and community mental health authorities. These individuals would not be relegated to jails or prisons with uncertain prospects for care and the risks of victimization."

Kois, L. E., Murrie, D. C., Gowensmith, W. N., & Packer, I. K. (2023). A public health perspective to reform the competence to stand trial system. Psychiatric Services 74(12), 1289–1290. https://doi.org/10.1176/appi.ps.20230079

> "Overall, findings of dramatically increased IST rates are challenging states to create additional CST restoration capacity. Despite drastically reduced bed capacity in state hospitals, the U.S. inpatient IST population has increased more than 70%. Thousands of defendants found to be IST reside in under resourced jails while awaiting inpatient restoration for months or even years; at least 16 states have faced legal action for their IST waitlists. Meanwhile, defendants in jail who are awaiting court-ordered treatment endure deteriorating mental health, and state mental health authorities pay millions of dollars in fines for failing to provide timely and adequate treatment. This crisis is cyclical; as hospitals scramble to accept these increasing forensic (i.e., IST) admissions, they reduce civil capacity, which leaves potential patients with less access to inpatient treatment until they are arrested."

McMahon, S. A. (2019). Reforming competence restoration statutes: An outpatient model. Georgetown Law Journal, 107(3), 601–645. https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=3198&context=facpub

> "This Article has proposed statutory amendments to allow and encourage outpatient treatment of defendants living with mental illness as a new tool to alleviate the crisis of overcrowding in forensic facilities and to reduce the number of such defendants held in pretrial detention. But it is not the only tool, nor is it the best tool in all circumstances. Instead, this option should be seen as one of many levers a judge could push when faced with a defendant found incompetent who is accused of a crime that, in a competent defendant, would likely result in pretrial release.
>
> The specific options available to police, prosecutors, and judges in criminal cases vary by jurisdiction, but every state affords the opportunity to not pursue charges against a defendant. In some cases, it might be best to divert the defendant from the criminal justice system altogether."

Murrie, D. C., Gardner, B. O., & Torres A. N. (2022). The impact of misdemeanor arrests on forensic mental health services: A state-wide review of Virginia competence to stand trial evaluations. Psychology, Public Policy, and Law, 28(1), 53–66. https://doi.org/10.1037/law0000296

> "A simple fiscal analysis also revealed that defendants facing only misdemeanor charges are disproportionately costly to Virginia, due in part to a greater need for inpatient restoration services. These findings suggest the national competency crisis could be reduced, to at least some degree, by mental health diversion or treatment strategies specific to mentally ill defendants facing only misdemeanor charges."

Obikoya, K. A. (2021). Jail diversion for misdemeanors can be a first step to improve the competency to stand trial process. Journal of the American Academy of Psychiatry and the Law Online, 49(4), 473–477. https://jaapl.org/content/49/4/473.long

> "A fourth strategy (and probably the most effective and efficient compared with others) has been to implement jail diversion programs. Jail diversion programs aim to move eligible individuals with mental illness from criminal processes to civil mental health treatment services."

Pinals, D. A., & Callahan, L. (2020). Evaluation and restoration of competence to stand trial: Intercepting the forensic system using the sequential intercept model. Psychiatric Services, 71(7), 698–705. https://doi.org/10.1176/appi.ps.201900484

> "For individuals ordered to restoration treatment while facing minor charges, restoration can abruptly end with dropped charges or a guilty adjudication and release, with no reentry or linkage services provided. Lack of coordinated reentry and treatment can heighten their risk for return into the forensic or criminal justice system. Although many defendants are released from confinement after their CST has been resolved, many other defendants are held in jail and do not receive continuous care, including needed psychiatric medications, which can lead to decompensation, troubling conditions of confinement, and, ultimately, to a return to court, where the issue of their competence might be raised again. Thus, their passage through the competence system can result in fractured and discontinuous care and does not yield treatment equivalent to the civil treatment system."

Simpson, J. (2021). A radical new approach for mental health diversion. Journal of the American Academy of Psychiatry and the Law Online, 49(4), 526–529. https://jaapl.org/content/49/4/526

> "Well-meaning public defenders, prosecutors, and judges are typically unfamiliar with the nuances of CST and may believe that referral for competency evaluation is likely to provide a significant benefit to the individual with serious mental illness in terms of long-term treatment, housing assistance, and so forth. The reality, as Hoge and Bonnie note, is that the CST system has a narrow focus; it is not designed to provide long-term treatment planning. Thus, its use in less serious criminal cases, or when the patient is already close to achieving competency, often proves counterproductive, as defendants end up waiting in jail for long periods, while typically not receiving robust services once their criminal proceedings and sentence ultimately conclude."

Tansey, A., Brown, K. P., & Wood, M. E. (2022). Characteristics and outcomes for defendants charged with misdemeanors referred for court-ordered competency evaluations. Psychological Services, 19(2), 252–260. https://pubmed.ncbi.nlm.nih.gov/33749296/

> "Defendants opined IST were more likely to have a psychotic disorder, a history of psychiatric hospitalization, and greater abnormalities in thought content relative to their competent counterparts. Of concern, defendants opined IST, and especially those referred for crisis evaluations upon dismissal of the charges, were significantly more likely to be re-arrested than their counterparts. These data support the criminalization hypothesis, suggesting that criminal justice involvement for this subset of defendants inappropriately reflects psychiatric instability, supporting the need for more options for inpatient and outpatient treatment to effectively intervene in this process."

Torrey, E. F., Dailey, L., Lamb, H. R., Sinclair, E., & Snook, J. (2017). Treat or repeat: A state survey of serious mental illness, major crimes, and community treatment. Treatment Advocacy Center. https://www.treatmentadvocacycenter.org/reports_publications/treat-or-repeat-a-state-survey-of-serious-mental-illness-major-crimes-and-community-treatment/

> "Ultimately, however, almost all of these individuals are released into the community at some point, with or without community supervision. Some are released from the forensic units of state psychiatric hospitals, where they had been held for competency restoration treatment, whereas others have been released from civil units of state psychiatric hospitals following their civil commitment. Still others are released from jails where they had been held since their arrest. It should be emphasized that the majority of these individuals are well known to the mental health and criminal justice systems. A summary of 68 studies of IST individuals reported that 53% of these individuals had previous psychiatric hospitalizations, and 60% had prior arrests."

REFERENCES

[1] Constantine, R., Andel, R., Petrila, J., Becker, M., Robst, J., Teague, G., Boaz, T., & Howe, A. (2010). Characteristics and experiences of adults with a serious mental illness who were involved in the criminal justice system. ***Psychiatric Services***, 61(5), 451–457.

[2] Torrey, E. F., Dailey, L., Lamb, H. R., Sinclair, E., & Snook, J. (2017). Treat or repeat: *A state survey of serious mental illness, major crimes, and community treatment.* Treatment Advocacy Center. https://www.treatmentadvocacycenter.org/reports_publications/treat-or-repeat-a-state-survey-of-serious-mental-illness-major-crimes-and-community-treatment/

[3] Fuller, D. A., Sinclair, E. A., Geller, J., Quanbeck, C., & Snook, J. (2016). Going, going, gone: *Trends and consequences of eliminating state hospital beds.* Treatment Advocacy Center. https://www.treatmentadvocacycenter.org/reports_publications/going-going-gone-trends-and-consequences-of-eliminating-state-psychiatric-beds/

[4] Wik, A., Hollen, V., & Fisher, W. H. (2017). *Forensic Patients in state psychiatric hospitals: 1999–2016.* National Association of State Mental Health Program Directors.

[5] Fuller, D. A., Sinclair, E., Lamb, H. R., Cayce, J. D., & Snook, J. (2017). *Emptying the 'new asylums': A beds capacity model to reduce mental illness behind bars.* Treatment Advocacy Center.

[6] Gowensmith, W. H. (2019). Resolution or resignation: The role of forensic mental health professionals amidst the competency services crisis. *Psychology, Public Policy, and Law,* 25(1), 1–14.

[7] Henrichson, C., & Delaney, R. (2012). *The price of prisons: What incarceration costs taxpayers.* Vera Institute of Justice.

[8] Rappleye, E. (2015). *Average cost per inpatient day across 50 states.* Becker's Hospital Review. http://www.beckershospitalreview.com/finance/averagecost-per-inpatient-day-across-50-states.html

[9] Rappleye. *Average cost per inpatient day.*

[10] Stettin, B., Lukes, A., Snook, J., Johnson, B., Munetz, M. R., & Hrouda, D. (2019). *Implementing assisted outpatient treatment: Essential elements, building blocks and tips for maximizing results.* Treatment Advocacy Center and Northeast Ohio Medical University.

[11] Gowensmith, N., Murrie, D. C. (2022). Competence Restoration Amid a Widespread "Competency Crisis." In B. H. Bornstein, M. Miller, & D. DeMatteo (Eds.), *Advances in Psychology and Law,* Vol. 6 (pp. 215–239). Springer. https://doi.org/10.1007/978-3-031-13733-4_8; Torrey et al. *Treat or repeat;* Kois, L. E., Murrie, D. C., Gowensmith, W. N., & Packer, I. K. (2023). A public health perspective to reform the competence to stand trial system. Psychiatric Services 74(12), 1289–1290. https://doi.org/10.1176/appi.ps.20230079

[12] Simpson, J. (2021). A radical new approach for mental health diversion. *Journal of the American Academy of Psychiatry and the Law Online,* 49(4), 526–529. https://jaapl.org/content/49/4/526; Callahan, L., & Pinals, D. A. (2020). Challenges to reforming the competence to stand trial and competence restoration system. *Psychiatric Services,* 71(7), 691–697. https://doi.org/10.1176/appi.ps.201900483

[13] Hoge, S. K., & Bonnie, R. J. (2021). Expedited diversion of criminal defendants to court-ordered treatment. Journal of the American Academy of Psychiatry and the Law Online, 51(3). https://jaapl.org/content/early/2021/10/05/JAAPL.210076-21

[14] Hoge & Bonnie. Expedited diversion; Tansey, A., Brown, K. P., & Wood, M. E. (2022). Characteristics and outcomes for defendants charged with misdemeanors referred for court-ordered competency evaluations. Psychological Services, 19(2), 252–260. https://pubmed.ncbi.nlm.nih.gov/33749296/; Obikoya, K. A. (2021). Jail diversion for misdemeanors can be a first step to improve the competency to stand trial process. *Journal of the American Academy of Psychiatry and the Law Online,* 49(4), 473–477. https://jaapl.org/content/49/4/473.long

[15] Boutros, A., Kang, S. S., & Boutros, N. N. (2018). A cyclical path to recovery: Calling into question the wisdom of incarceration after restoration. *International Journal of Law and Psychiatry,* 57, 100–105. https://www.sciencedirect.com/science/article/abs/pii/S0160252717300419

[16] Simpson. A radical new approach; Pinals, D. A., & Callahan, L. (2020). Evaluation and restoration of competence to stand trial: Intercepting the forensic system using the sequential intercept model. *Psychiatric Services,* 71(7), 698–705. https://doi.org/10.1176/appi.ps.201900484

[17] Kois et al. A public health perspective; Douglas, A. (2019). Caging the incompetent: Why jail-based competency restoration programs violate the Americans with Disabilities Act under *Olmstead v. L.C. Georgetown Journal of Legal Ethics,* 32, 525–575. https://www.law.georgetown.edu/legal-ethics-journal/wp-content/uploads/sites/24/2019/10/GT-GJLE190027.pdf; Fuller et al. Emptying the 'new asylums.'
[18] Murrie, D. C., Gardner, B. O., & Torres A. N. (2022). The impact of misdemeanor arrests on forensic mental health services: A state-wide review of Virginia competence to stand trial evaluations. *Psychology, Public Policy, and Law,* 28(1), 53–66. https://doi.org/10.1037/law0000296
[19] McMahon, S. A. (2019). Reforming competence restoration statutes: An outpatient model. *Georgetown Law Journal,* 107(3), 601–645. https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=3198&context=facpub; Hansen, T. E., Blekic, A., & Bloom, J. D. (2023). COVID-19, Mink-Bowman, and court-ordered psychiatric services in Oregon. *Journal of the American Academy of Psychiatry and the Law Online,* 51(3). https://jaapl.org/content/early/2023/08/07/JAAPL.230056-23; Bloom, J. D., Hansen, T. E., & Blekic, A. (2022). Competency to stand trial, civil commitment, and Oregon State Hospital. *Journal of the American Academy of Psychiatry and the Law Online,* 50(1). https://jaapl.org/content/jaapl/early/2021/12/08/JAAPL.210055-21.full.pdf; Gordon, S., Piasecki, M., Kahn, G., & Nielsen, D. (2016). Review of Alaska mental health statutes. Scholarly Works, 970. https://scholars.law.unlv.edu/facpub/970
[20] Stettin et al. *Implementing assisted outpatient treatment.*