LEAP:
An Innovative Alternative to Inpatient Juvenile Fitness Restoration

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Learning Objectives

- Examine the challenges associated with competency restoration for justice-involved youth in Texas, including limited availability of appropriate services, the impact of state hospital and state-supported living center waitlists, and financial considerations affecting access to care.
- Outline the structure, methodologies, and interactive strategies used by the Legal Education Attainment Program (LEAP) to help youth attain fitness/competency without state hospitalization, in accordance with legislative updates to competency restoration options and requirements.
- Explain the psychologist's role in fitness/competency evaluations, treatment planning, and implementation of developmentally appropriate interventions within alternative programs like LEAP.

Competency/Fitness

- Competency to Stand Trial – 46B
- Fitness to Proceed – Chapter 55, TFC

What does it mean?

- Refers to a defendant's capacity to function meaningfully and knowingly in a legal proceeding
- Idea is that if someone cannot understand the nature and purpose of criminal proceedings, they should not continue
- Competence applies at every stage in the juvenile justice process, but is most often raised in pre-trial hearings
- A defendant can be found competent and can still be found not responsible

Competency (Dusky) Test

- "The test must be whether he[the defendant] has sufficient present ability to consult with his attorney with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against him."
- Two Prongs:
  - The defendant's capacity to understand the criminal process as it applies to him or her, including the role of the participants in that process.
  - Defendant's ability to function in that process- consulting with counsel in the preparation of a defense.

Principles Related to Competency

Task-specific

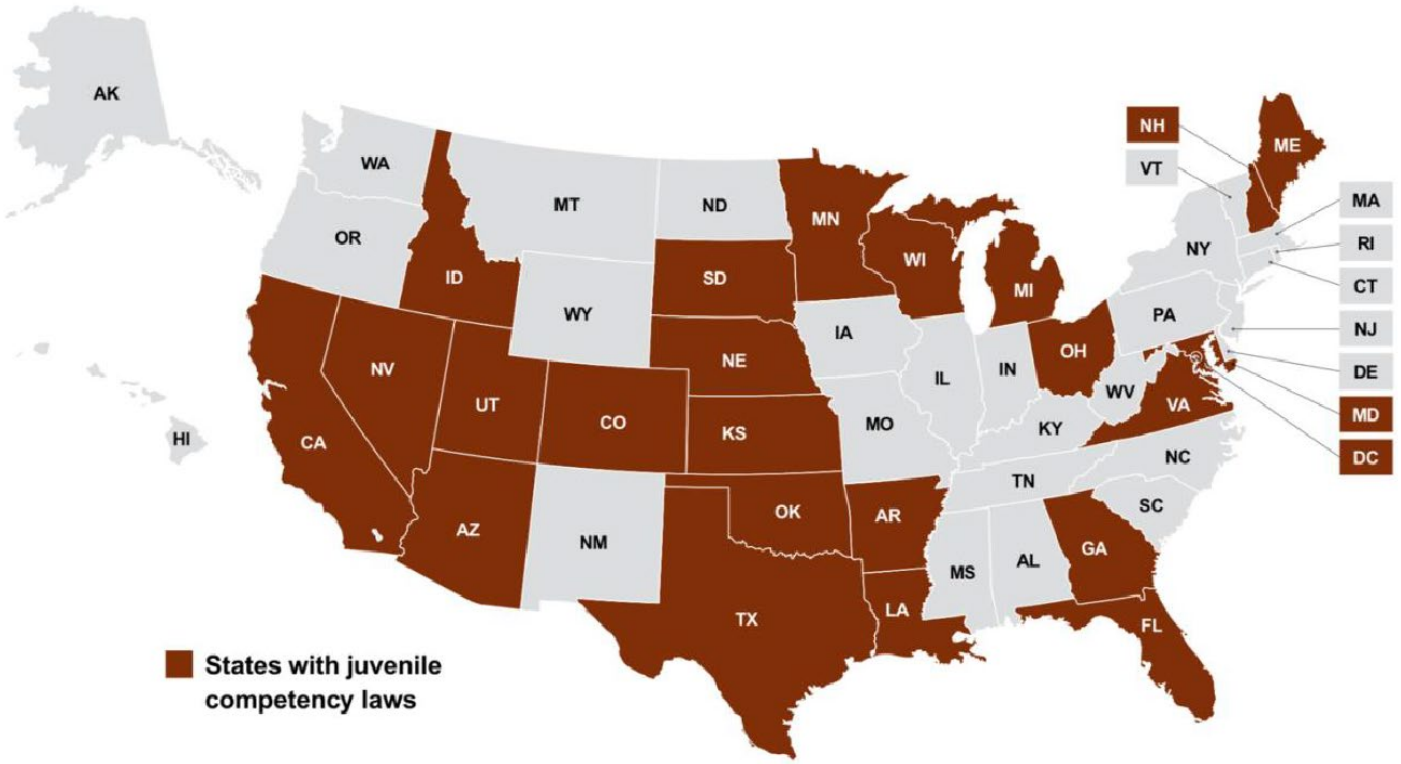
Moment-specific

Diagnosis does not define incompetence

Presumption of competence-incompetence requires a judicial determination

Threshold for incompetence may vary depending on task

Does Adjudicative Competence Apply in Juvenile Court?



- Many state statutes consider the issue. A survey of juvenile court clinical services in 87 jurisdictions in 31 states (recently updated to 37), all reported that they routinely perform CST evaluations.
- Kent v. United States (1966) and In re Gault (1967) establish their necessity

Panza et. al (2020) research

- Most states did not specify under which conditions the question of a juvenile defendant's competency should be raised.
- Twenty-five states provided time length recommendations for remediation ranging from 60 days to 5 years in statute, and only two specified different recommendations for different treatment settings.
- 11 States had an age-based assumption of incompetence (ranging from age 10 to age 14)
- 37 of the 50 states had statutes mentioning juvenile CST, 10 of which simply applied adult CST statutes to juveniles.
- Most states (31 of the 37) indicated that mental illness and intellectual disability were predicates for ITP, but few included developmental immaturity (15 of 37).

State Hospital/SSLC Restoration Costs

State Hospital

- Average state hospital length of stay is 87.9 days
- Daily rate for state hospital juvenile/civil beds is $906
- Results in average costs of over 79K for inpatient restoration services.
- Current wait time for bed is 4-8 weeks
- 65% restoration rate for youths referred to state hospital between 2010-2020.

State Supported Living Center

- Daily rate is $967.
- Results in average costs of over $87K for restoration services.
- Extended wait times

State Supported Living Center Capacity

Fiscal Year	Number of Juvenile Justice Involved Admissions
2019	23
2020	12
2021	10
2022	14
2023	18
2024	18

Harris County Chapter 55 Needs

Since 2019, 63 youths in Harris County alone have needed Chapter 55 services

Initial Referral Year	Number of Youths Referred	Number of Youths Needing Inpatient Services	LEAP participants
2019	8	8	N/A
2020	2	2	N/A
2021	4	2	2
2022	9	7	2
2023	19	10	3
2024	20	7	13
2025	6	2	7

ELIMINATE THE WAIT

Problem

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

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

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

Solutions

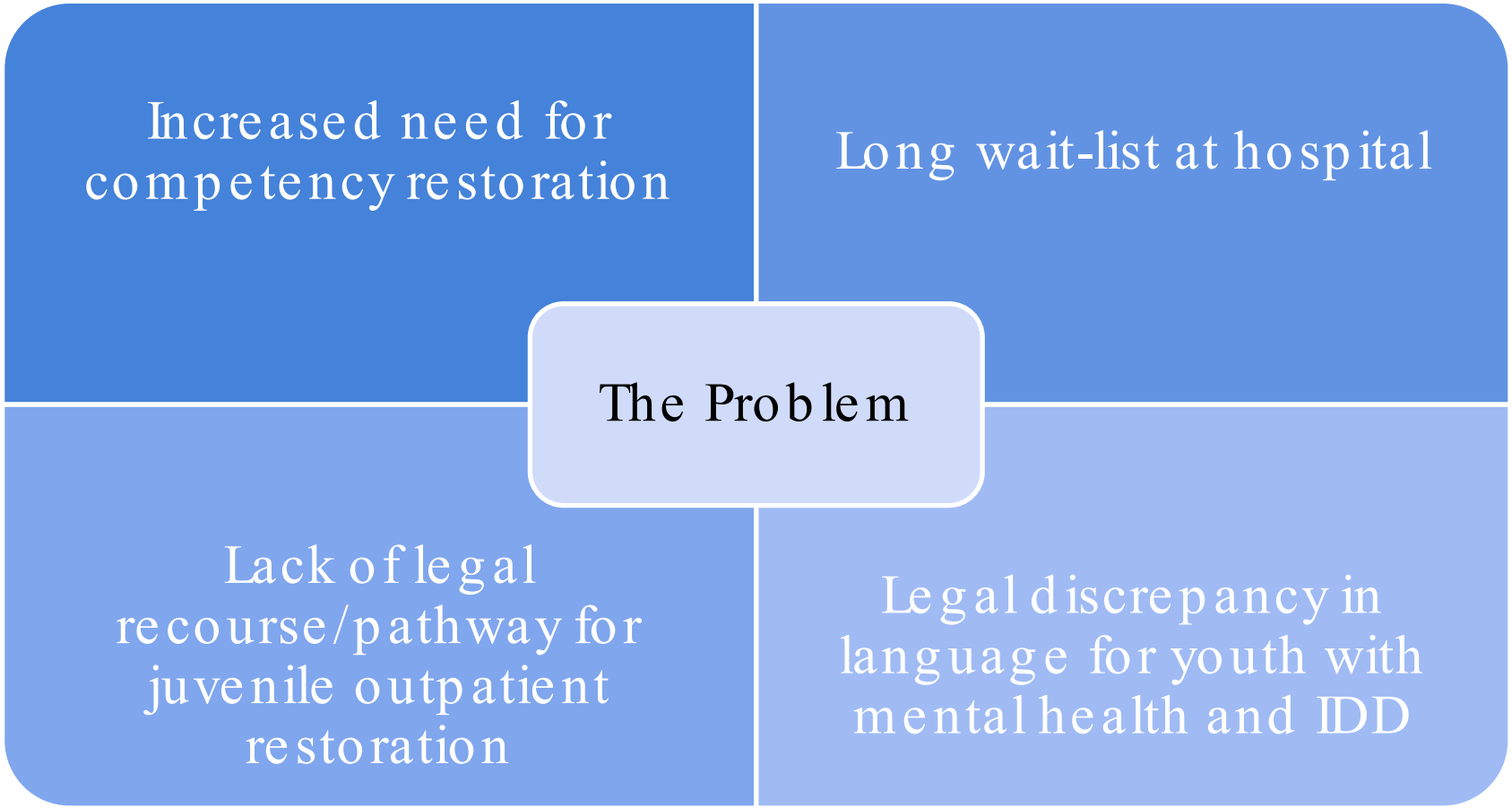
Expand Crisis Response and Pre-Arrest Diversion Options

Promote Alternatives to Inpatient Competency Restoration

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

Lead Through Partnerships

Juvenile Justice Needs



Working together to change the law

Collaborators

- Legislators
- Judges
- Attorneys
- Clinicians
- Local Mental Health Authority
- Juvenile Probation
- Multiple Texas Counties

The Changes

- Specific language for who can complete juvenile evaluations & how
- Creating equity for mental health and IDD diagnoses
- Require evaluator to specify restoration plan (e.g., if youth meets inpatient criteria)

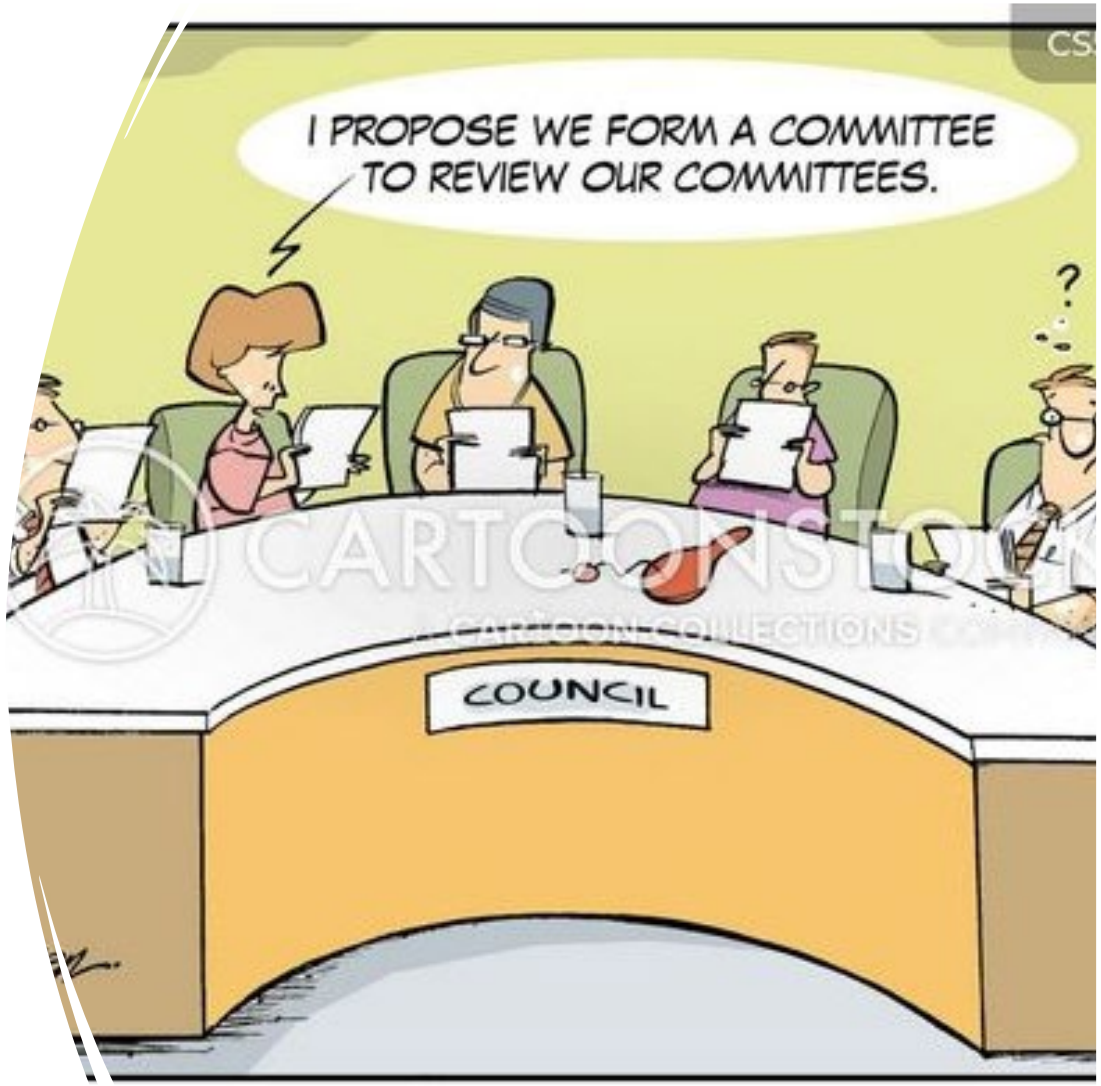
Outpatient Restoration

- Creating legal framework for juvenile outpatient services
- Outline legal requirements for juvenile outpatient services.

Legislative Solutions

Chapter 55 Reform

- In 2022, the Chapter 55 Advisory Committee was formed to examine the specific needs of children and youth in the context of juvenile proceedings
- Committee members include attorneys, clinicians, department chiefs, and judges involved with the Texas juvenile justice system.
- Committee goals
  - streamlining processes
  - improving the use of evaluations and experts,
  - expanding the use of outpatient restoration and services



Chapter 55 Committee Members

- Amanda Peters Britton (Chair)
- H. Lynn Hadnot (Chair)
- Dr. Susan Palacios (Chair)
- Susan Badger
- Dr. Joe Barton
- Ryan Bristow
- Amy Bruno
- Dr. Madeleine Byrne
- Denika Carruthers
- William Carter
- Dr. Uche Chibueze
- Ed Cockrell
- William “Bill” Cox
- Molly Davis
- Maryann Denner
- Maggie Ellis
- Merrell Foote
- Dr. Jessica Foti
- Scott Friedman
- Rachel Gandy
- Patrick Gendron
- Rose Gomez
- Elizabeth Henneke
- Dr. Daniel Hoard
- Casey Koenig
- Olivia Lee
- Troy Navarrette
- Jimmy Olivas
- Jennifer Parada
- Melanie Ramsey
- Claudia Schmidt
- Kaci Singer
- Preston Streufert
- Tressa Surratt
- Elisa Tamayo
- Nydia Thomas
- Dr. Jeannie Von Stultz
- Mark Williams
- Krista Wingate
- Erica Winsor
- Representative Gene Wu

Criteria for Court-Ordered Examinations

A “disinterested” expert

Qualifications (TFC 55.04)

- Physician or psychologist (doctoral) licensed in TX
- Board certified in forensic psychiatry/psychology
- or have at least 24 hours of specialized forensic training relating to IST, FTP, LOR, or sanity evaluations. 8 CEUs related to forensic evals completed in the 12 months preceding the date of appointment.
- Complete 6 hours of required CEUs in forensic psychiatry/psychology in the 24 months preceding appointment

These qualifications already existed

An expert can be appointed who doesn’t meet these requirements if the court determines there are extenuating circumstances.

Examination Requirements

Adds developmentally appropriate requirements for children and youth to Subchapter C to improve the quality and value of fitness examinations and reports.

Examiners must opine as to whether the child meets criteria for court-ordered mental health services or court-ordered intellectual disability services.

Court Ordered Mental Health Services

Sec. 55.05. CRITERIA FOR COURT-ORDERED MENTAL HEALTH SERVICES FOR CHILD.

(a) A juvenile court may order a child who is subject to the jurisdiction of the juvenile court to receive temporary inpatient mental health services only if the court finds, from clear and convincing evidence, that:

(1) the child is a child with mental illness; and

(2) as a result of that mental illness, the child:

- (A) is likely to cause serious harm to the child's self;
- (B) is likely to cause serious harm to others; or
- (C) is:
  - (i) suffering severe and abnormal mental, emotional, or physical distress;
  - (ii) experiencing substantial mental or physical deterioration of the child's ability to function independently; and
  - (iii) unable to make a rational and informed decision as to whether to submit to treatment or is unwilling to submit to treatment.

Court Ordered Residential Intellectual Disability Services

Sec. 55.06. CRITERIA FOR COURT-ORDERED RESIDENTIAL INTELLECTUAL DISABILITY SERVICES FOR CHILD.

A child may not be court-ordered to receive services at a residential care facility unless:

(1) the child is a child with an intellectual disability;

(2) evidence is presented showing that because of the child's intellectual disability, the child:

- (A) represents a substantial risk of physical impairment or injury to the child or others; or
- (B) is unable to provide for and is not providing for the child's most basic personal physical needs;

(3) the child cannot be adequately and appropriately habilitated in an available, less restrictive setting;

(4) the residential care facility provides habilitative services, care, training, and treatment appropriate to the child's needs; and

(5) an interdisciplinary team recommends placement in the residential care facility.

Temporary Outpatient Services

(b) A juvenile court may order a child who is subject to the jurisdiction of the juvenile court to receive **temporary outpatient mental health services** only if the court finds:

(1) that appropriate mental health services are available to the child; and

(2) clear and convincing evidence that:

- (A) the child is a child with severe and persistent mental illness;
- (B) as a result of the mental illness, the child will, if not treated, experience deterioration of the ability to function independently to the extent that the child will be unable to live safely in the community without court-ordered outpatient mental health services;
- (C) outpatient mental health services are needed to prevent a relapse that would likely result in serious harm to the child or others; and
- (D) the child has an inability to effectively and voluntarily participate in outpatient treatment services, demonstrated by:
- (i) any of the child's actions occurring within the two-year period preceding the date of the hearing; or
- (ii) specific characteristics of the child's clinical condition that significantly impair the child's ability to make a rational and informed decision as to whether to submit to voluntary outpatient treatment.

Alternative arrangements

"Ok ... who's gonna foot the bill?"

The juvenile probation department **may** provide restoration classes in collaboration with the outpatient alternative setting.

If the court orders a child placed in a private facility, residential care facility, or an alternative setting, the state or political subdivision of the state **may** be ordered to pay any costs associated with the ordered services.

The court **is required** to consult with the local juvenile probation department, local treatment or services providers, with LMHA and LIDDA to determine appropriate treatment or services and restoration classes for the child.

Expanded Judicial Discretion - Juvenile Transfer

- Proposes the judge have discretion to make the transfer after holding a hearing under the same standard as a certification hearing under section 54.02.
- This prevents automatic transfer to adult criminal court of the cases of persons who have alleged to have engaged in delinquent conduct prior to the age of 18, have been found unfit to proceed and are still pending after the youth was ordered to engage inpatient mental health services without achieving discharge or furlough.
- Affects Subchapter B, C, and D.

Harris County's Outpatient Fitness Attainment Program

Common problems among youth found not fit to proceed

Limited knowledge

- Most adolescents have limited exposure to court knowledge

Limited Capacity

- IDD, low IQ, autism, can contribute to limited capacity to understand and acquire appropriate capacities

Attentional Deficits

- ADHD, trauma, depression, anxiety (and others) can affect youth's attention and concentration and can affect memory

Communication Problems

- Autism, IDD, selective mutism, low vocabulary, illiteracy and others can affect youth's ability to understand and communicate with others.

Services they may need

Medication

Work with psychiatrist

May need psychoeducation

Assess access and compliance

Therapy

Address underlying issues

Reduce anxiety/depression

Develop or enhance coping skills

Increase communication ability

Legal Education

Formal process

Organized to address youth's limitations

Address factual and rational understanding

Youth Programs for Fitness Attainment

Utah

Colorado

Florida

Texas

Philadelphia

Virginia

Typically modular

Based off of adult programs

Some run as groups, some as individual

LEAP Criteria

INCLUSION

- Determined unfit to proceed by the court
- Does not meet commitment criteria
- Court ordered to participate in LEAP

EXCLUSION

- Determined to not be restorable
- Inability to participate in person or online

Program Details

LEAP staff conducts suitability assessment

Treatment plan created by LEAP staff

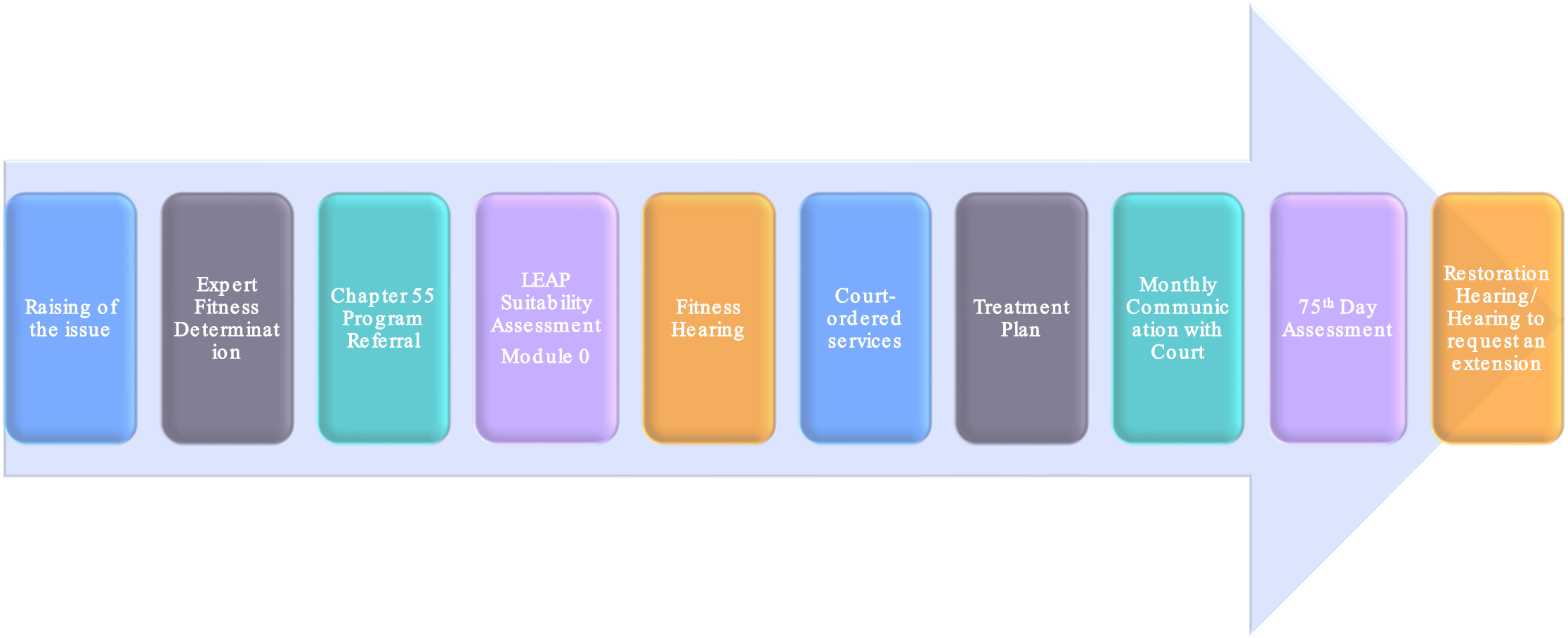
Youth receives one-on-one 1-hour education sessions 2-3 times per week

Pre- and post-tests to track progress

Monthly updates are provided to court

Conduct independent FTP evaluation between 75th and 90th day in program

Harris County Procedures



Principles behind LEAP

- Interactive
- Engaging
- Developmentally appropriate
- Defense Attorney Approved
- Customizable

LEAP
LEGAL EDUCATION ATTAINMENT PROGRAM

The legal education materials in this program are based on the curriculum developed by the Center for Persons with Disabilities at Utah State University.

1. Module 1: Why Are You Here? Understanding Restoration for Trial Competence
2. Module 2: Lawyers, Defense Attorneys, Prosecutors, and Guardian ad Litem
3. Module 3: The Juvenile Justice System
4. Module 4: What Are You Charged With? (Allegations)
5. Module 5: What Could Happen to You?
6. Module 6: Your Side of the Story
7. Module 7: Telling Your Side of the Story
8. Module 8: How Do You Defend Yourself?
9. Module 9: Testifying
10. Module 10: How Do You Act in Court?

Measuring Progress

Pre- and post-test

- Aiming for > 70%

Interactive activities

- Drawing, answering questions, roleplaying

Hypothetical scenarios

- Document problems
- Assess repeatedly

Underlying Principles for Working with Each Youth

- Establish rapport
- Identify learning style
- Make accommodations for attention span and other needs
- Match their language when possible
- Highlight strengths
- Communicate with legal and treatment teams

Identifying Different Legal Needs

- Type of case
  - Felony or misdemeanor
- Possible needs in court
  - Plea deals, trial, testifying, reconstructing events
- Possible outcomes
  - Probation, placement, TJJD, certification

Use of Hypotheticals

- **Who?**
  - Use yourself as the delinquent actor
  - Create a third delinquent actor
  - Avoid using the youth as the actor
- **What?**
  - Different scenarios to illustrate points
  - Similar offenses or situations to what they face
  - Avoid getting stuck on specifics
  - Diversify examples
- **How?**
  - Start open ended
  - Guide the youth to teach them to think about the options presented to them
  - Build off of previous knowledge

LEAP Demonstration

Type this website into your browser:

join.nearpod.com

Enter the 5-digit code and click "Join"!

LEAP

nearpod

Case Examples

Tom

- Diagnosis: Autism & ADHD
- In-person sessions
- Engaged but anxious
- Difficulty with abstract concepts
- Good memorization

Jerry

- Diagnosis: ADHD, DMDD, Borderline Intellectual Functioning
- Online sessions
- Limited engagement – easily distracted & low frustration tolerance
- Difficulty with learning items
- Problems controlling hyperactive behavior

Additional Challenges

Time

- Big burden for families
- Tired after school
- Absences
- Technology problems
- More difficult to reschedule

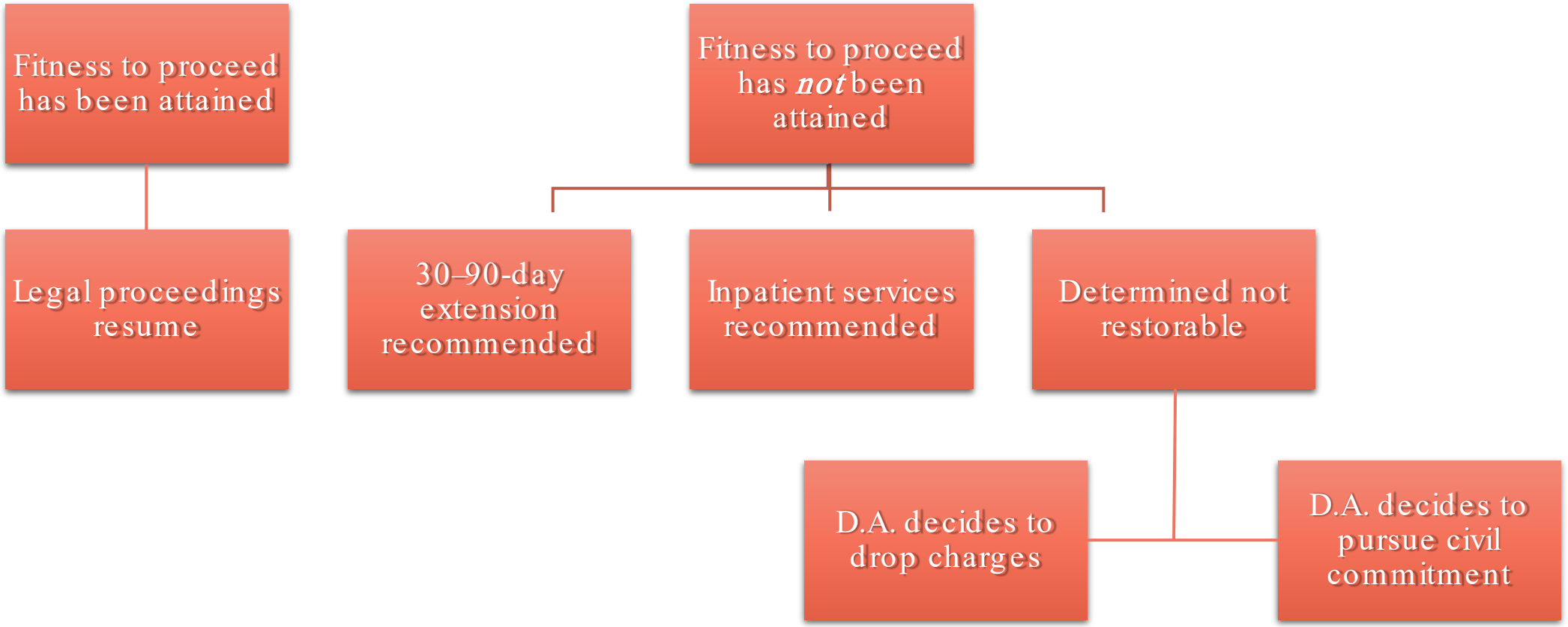
Limited consequences

- Judges can admonish
- Relies on parental consequences

Parents

- Sometimes give confusing info to youth
- Youth may have difficulty accessing services on their own
- Sometimes advocating against participation

Outcomes of outpatient legal education



Outcomes

LEAP
LEGAL EDUCATION ATTAINMENT PROGRAM

25 youths completed LEAP

Common Diagnoses

- IDD
- ADHD
- Autism

Outcomes

- 16 attained fitness (64% success rate)
  - 1 found fit while on waitlist for hospital, taken off waitlist after LEAP
- 7 not fit after LEAP
  - 3 not restorable
  - 4 went to state hospital (3 were previously on waitlist)
- 2 offenses non-suited during LEAP

1 in program now

Future Directions

Expand program

- Provide services to other counties
- Provide basic legal info to all youth in detention

Research

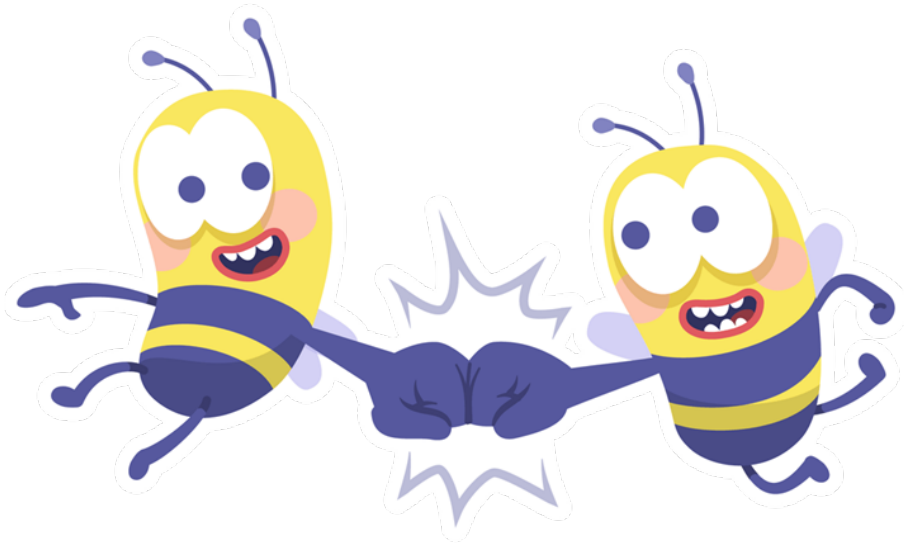
- Multi-state collaboration
- Assessing efficacy

Policy

- Increase awareness of existing policy
- Who can do the work

Current LEAP Participants

- Bexar County Juvenile Probation
- Dallas County Juvenile Probation
- Denton County Juvenile Probation
- Galveston County Juvenile Probation
- Montgomery County Juvenile Probation
- Parker County Juvenile Probation
- MHMRA of Tarrant County
- State of Utah Department of Health and Human Services
- Wise and Jack Juvenile Probation



MOU Process

Send a notification of interest email:

- LEAP@hctx.net
- Uche.Chibueze@hcjpd.hctx.net

Participate in initial LEAP orientation

MOU execution

2-day LEAP implementation training

- Receive access to manual, modules, and documentation paperwork

Ongoing consultation available

Questions

Thank You

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