

Competency Restoration: Use of State Hospitals, Community-Based, and Jail-Based Approaches



NRI's 2020-2021 State Profiles

November 2021

HIGHLIGHTS BASED ON 48 STATES RESPONDING TO THE FORENSIC COMPONENT OF NRI'S 2020 STATE PROFILES

Note: although 48 states responded to the forensic component, not all states provided answers to all questions; therefore, some of the information presented in this report is based on responses from less than the total number of reporting states.

A criminal defendant who has been found incompetent to stand trial (IST) and potentially restorable must first be restored to competency before the legal process can proceed. To be competent to stand trial, a defendant must be able to communicate rationally with his or her defense lawyer and have a rational and factual comprehension of the legal proceedings.¹ States are structured in various ways to achieve competency restoration. For many states, State Mental Health Agencies (SMHAs) or their contracted providers provide competency restoration (CR) services in outpatient and inpatient settings. In 17 states, the SMHA has the discretion to determine where (inpatient or outpatient) a defendant will receive CR services, whereas in 32 states, the courts make the service location determination.

Outpatient CR

SMHAs provide outpatient CR services to a variety of defendants with a variety of criminal charges including misdemeanors (19 SMHAs) and felonies (21 SMHAs). In 17 states, the SMHA does not provide CR services in outpatient settings. Six SMHAs reported that jails in their states operate mental health facilities that provide CR services within the jail setting. An estimated 2,856 defendants are ordered for outpatient CR services annually in 14 states, an average of 204 defendants per state (median of 102 defendants), ranging from a low of 3 defendants in New York to a high of 786 in Florida. In Arkansas, Florida, Maine, Oregon, and Texas 100% of these outpatient CR services are completed by community mental health providers. SMHAs in 35 states pay for outpatient CR services.

Inpatient CR

Although many states offer outpatient CR services, in most states, CR services are provided in inpatient settings. Inpatient CR services are provided in dedicated forensic state hospitals (25 SMHAs), dedicated forensic units in a state psychiatric hospital (28 SMHAs), general unit in state psychiatric hospitals (16 SMHAs), private psychiatric hospitals (two SMHAs). Like outpatient CR services, SMHAs provide inpatient CR services to criminal defendants charged with misdemeanors and felonies.

In 25 states, courts can require a defendant be admitted for inpatient CR services even if the SMHA prefers outpatient CR services. However, in 11 states, the SMHA has the discretion to discharge a patient admitted for CR services without court authorization when the patient is deemed 'restored' or no longer requires inpatient services. Courts reject SMHA requests to discharge patients the state hospital opines are no longer IST or no longer in need of hospitalization in 33 states, however this almost never happens (10 SMHAs) or happens only occasionally (21 SMHAs).

¹ Hogg Foundation for Mental Health. Policy Brief: Competency Restoration. (March 2013). <https://hogg.utexas.edu/project/competency-restoration-policy-brief>

2,856

defendants are ordered for
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143

Average length of stay (days) for
inpatient CR services

