



Restoration of Competency to Stand Trial

What is Competency Restoration?

Competency restoration is the process used when an individual charged with a crime is found by a court to be incompetent to stand trial, typically due to an active mental illness or an intellectual disability. A criminal defendant must be restored to competency before the legal process can continue. To be considered restored and competent to stand trial, a defendant must be able to consult with his or her defense lawyer and have a rational and factual understanding of the legal proceedings.

Current Competency Restoration Options

State-Run Psychiatric Hospitals – Ten state-run psychiatric hospitals provide a total of 940 forensic beds for individuals found incompetent to stand trial or Not Guilty by Reason of Insanity (NGRI). In FY 2012, 12.3% of all commitments to state-run psychiatric hospitals were individuals found incompetent to stand trial.¹ Individuals charged with violent felony offenses are committed to North Texas State Hospital's Vernon Campus or Rusk State Hospital for inpatient competency restoration services.

Community and Privately-Owned Psychiatric Hospitals – The Department of State Health Services contracts with community-based and privately-owned facilities to increase the state's psychiatric bed capacity.

Outpatient Competency Restoration Pilot Programs – In 2007, Texas initiated an outpatient competency restoration (OCR) pilot program. OCR provides community-based services to people charged with misdemeanors and non-violent felony offenses. There are 11 OCR sites across Texas that served 182 individuals in FY 2012.²

Proposed Competency Restoration Option

Jail-Based Competency Restoration Programs – This type of program provides restoration services in county jails, rather than in psychiatric facilities or in community-based settings. ***Currently, jail-based competency restoration is not permissible under Texas Code of Criminal Procedure. Two bills (HB 2349 and SB 1475) filed this legislative session authorize the delivery of competency restoration services in some county jails.***

Some states permit jail-based competency restoration services, but there is very little data available documenting the efficacy of existing programs. The California legislature recently approved a 20-bed jail-based competency restoration pilot program in San Bernardino County that is operated by Liberty Healthcare Group. Over nine months, the program served 42 individuals, restoring 19 to competency.³ The Legislative Budget Board cited this program in its Government Effectiveness and Efficiency Report, recommending that Texas implement a jail-based competency restoration program.⁴

Comparing the Options⁵

Type of Program	Success Rate	Cost per Day	Avg. Length of Stay	Avg. Total Cost per Individual Served
State-Run Psychiatric Hospital (non-maximum security)	75% restored	\$421	120 days	\$50,520
Outpatient Competency Restoration	55% restored, 11% improved and charges dropped	\$106	112 days	\$11,894
Jail-Based Competency Restoration (San Bernardino County, CA)	45% restored while in jail-based program ⁶	\$278	63 days*	\$17,514

*Average length of stay before restoration is 54 days. Individuals can be committed to the jail-based program for up to 70 days; if they are still incompetent at 70 days, they must be transferred to a mental health facility.

Considerations for Jail-Based Competency Implementation⁷

Choosing the right candidates – OCR programs provide treatment in the least restrictive setting at a significantly lower cost than jail-based programs. Texas’ OCR programs have a greater success rate than the California jail-based program. Approximately 66% of individuals served in OCR are either restored to competency or see improvement before charges are dropped. Only 45% of individuals served in San Bernardino County’s jail attain competency while committed.⁸ ***Where OCR programs are available, individuals who would be eligible for bail should be referred to OCR programs for competency restoration. Individuals who present a greater security or flight risk, but who do not need intensive inpatient restoration services, are good candidates for jail-based programs.***

Differences in treatment setting – County jails are not the optimal setting for providing mental health treatment. Some successful jail-based competency restoration programs operate in specialized detention units that better facilitate the delivery of services and the observation of detainees.⁹ They also provide supplemental training for staff and maintain an adequate number of licensed mental health professionals on the unit. ***Jail-based competency restoration programs should only be implemented in counties with programs that have adequate staffing ratios and the overall capacity to provide these services. Additionally, stringent monitoring and accountability is critical if jail restoration services are developed and privatized.***

Separation of evaluators and treatment providers – Private providers of jail-based competency restoration services have inherent incentives to hold individuals in jail-based competency restoration programs for longer than necessary, as their compensation is generally based on total days in the jail. ***In order to avoid a conflict of interest, Texas should require independent evaluators and independent recommendations for any private provider of jail-based competency restoration service.***

¹ Legislative Budget Board, Government Effectiveness and Efficiency Report (2013 Jan) pg. 220 *available at:* <http://www.lbb.state.tx.us/GEER/Government%20Effectiveness%20and%20Efficiency%20Report%202012.pdf#UseAlternativeSettingsTo>

² *Id.* at 223.

³ California Legislative Analyst's Office, *An Alternative Approach: Treating the Incompetent to Stand Trial* (2013 Jan) pg. 11 *available at:* <http://www.lao.ca.gov/reports/2012/hlth/ist/incompetent-stand-trial-010312.pdf>.

⁴ *Supra* fn. 1 at 232.

⁵ All cost data taken from Legislative Budget Board's Government Effectiveness and Efficiency Report.

⁶ *Supra* fn. 3.

⁷ *See also* Kapoor R. Commentary: Jail-Based Competency Restoration. *Journal of the American Academy of Psychiatry and the Law*. 39:311-15,2011.

⁸ *Id.*

⁹ Morenz M, Busch K. Pima County Jail. *American Academy of Psychiatry and the Law Newsletter*. 36:25, 2011.