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Competency & Restoration Reimagined from Practice to Possibility: Competency Process Alternatives



November 5, 2025

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Competence Alternatives

Statutory Language

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State	Allows Certain Pre-Trial Proceedings While Defendant Is Incompetent	Provides for Acquittal-Only Merits Proceedings While Defendant Is Incompetent	Imposes Specific Time Limits for Competence Evaluation	Limits Some Aspect of Evaluation Process to 30 Days or Less	Mentions Outpatient Examination Options	Requires More Than One Examiner	Allows Simultaneous Insanity Examination	Must Include Specific Information Other Than the Examiner's Opinion on Whether the Defendant Is Competent	Evaluation Includes Assessment of Likelihood of Restoration	Evaluation Includes Recommendation for Treatment Placement	Evaluation Includes Assessment of Dangerousness
Alabama	No	No	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes
Alaska	No	No	No	N/A	Yes	No	Yes	Yes	No	No	Yes (if accused of felony offense against a person or felony arson)
Arizona	Yes	No	Yes	No	No	Yes (felonies)	Yes	Yes	No	Yes	Yes (upon request of prosecution)
Arkansas	Yes	No	Yes	No	Yes	No	No (explicitly prohibited)	Yes	Yes	Yes	Yes
California	Yes	No	No	N/A	No	No	No	Yes	No	Yes (felonies)	No
Colorado	Yes	No	Yes	No	Yes	No	No	Yes	Yes	Yes	Yes
Connecticut	Yes	No	Yes	No	No	No	No	Yes	Yes	No	Yes
Delaware	Yes	Yes	No	N/A	No	No	No	No	No	No	No
District of Columbia	Yes	No	Yes	Yes (inpatient)	Yes	No	No	Yes	Yes	No	No
Federal System	No	No	Yes	Yes (inpatient)	Yes	No	No	Yes	No	No	No
Florida	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Georgia	No	No	No	N/A	Yes	No	No	No	Yes (court may order this assessment, but is not required to do so)	No	No

Competence Statutes Tracker

<https://www.nacdl.org/Content/CompetencyinCriminalCases>



Colorado

“With the agreement of the parties, the court may delay making determinations regarding the defendant's competency to allow a bridges wraparound care coordinator to conduct an initial intake of the defendant pursuant to section 16–8.6–108 to determine whether the bridges wraparound care program is appropriate for the defendant.”

Co. St. § 16-8.5-102(4)

Washington

For certain non-felonies: “the court shall first consider all available and appropriate alternatives to inpatient competency restoration. If the parties agree that there is an appropriate diversion program available to accept the defendant, the court shall dismiss the proceedings without prejudice and refer the defendant to the recommended diversion program.”

Wash. Rev. Code Ann. § 10.77.650

State	Excludes Misdemeanors or Low-Level Crimes from Restoration	Provides Pathways to Non-Commitment Diversion Programs	Mentions Outpatient Options for Restoration	Includes Explicit Time Limits on Restoration	Explicit Time Limit Is Six Months Or Less	Explicit Time Limit Is One Year or Less
Alabama	Yes	No	Yes	No	N/A	N/A
Alaska	No	No	Yes	Yes	Yes (except if defendant is charged with crime of force involving a person and defendant presents a substantial danger of physical injury)	Yes
Arizona	Yes	No	Yes	Yes	No	No

Competence Statutes Tracker

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1	State	Location of restoration*
2	Alabama	Outpatient unless "defendant's being at large poses a real and present threat of substantial harm to the defendant or others." Ala R. Crim. P. 11.6(c)(3)(i), (ii)
3	Alaska	"The court may order a defendant to receive further evaluation and treatment under (a) or (b) of this section at an outpatient clinic or other facility as a condition of the defendant's release under AS 12.30. In considering the conditions of a defendant's release under this subsection, the court shall, in addition to any applicable requirement under AS 12.30, consider (1) any medical information provided by the Department of Family and Community Services; (2) the defendant's mental condition; (3) the defendant's level of need for evaluation and treatment under this chapter; (4) the defendant's ability to participate in outpatient treatment; and (5) the defendant's history of evaluation and treatment under this chapter." § 12.47.110(a)
	Arizona	Least restrictive alternative, considering "1. Whether confinement is necessary for treatment. 2. The likelihood that the defendant is a threat to public safety. 3. The defendant's participation in and cooperation during an outpatient examination of competency to stand trial conducted pursuant to § 13-4507. 4. The defendant's willingness to submit to outpatient competency restoration treatment as a condition of pretrial release, if the defendant is eligible for pretrial release." § 13-4512(D)

Competence Statutes Tracker

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Winnebago County Wellness Track

Honorable John T. Gibbons, Presiding Judge

Program Contact Information

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Creation of Wellness Track

- Stakeholders in Misdemeanor Courtroom noted frequent recidivism among defendants
- Winnebago County Crisis Co-Responder Team (CCRT) often was attempting to assist these individuals
- CCRT collaborated with the Court Stakeholders
 - Sharing of available services
 - Vetted available services and introduced community services to the Court parties
- Held Summits with Court parties
 - Presented issues that were occurring and collaborated on responses
- CCRT offered services to ensure a warm hand-off occurred
- Set status dates to ensure linkages had occurred
- Designated time slot on status call
- Hurdles that remained:
 - CCRT was spending time in the courtroom instead of in the community
 - Identification of cases was isolated to one courtroom
- Hired Court Liaison to work with client

Target Population

- Misdemeanor cases, primarily Class B & C
- Generally non-violent offenses, exceptions upon agreement of the State's Attorney's Office
- Based on case information, a potential need for mental health services
 - Housing Insecurity and Substance Use Disorder indicators considered

Identification of Clients



- Court Liaison reviews the charges filed daily and Notice to Appear call
- Reviews court records for potential identification:
 - Statement of Facts
 - Past criminal history
 - Jail mental health assessment/pretrial services report
- Referrals through CCRT, Jail medical/ mental health staff, Public Defender's Office, State's Attorney's Office, or Judges
- Court parties are notified of the potential fit for WT
 - Communications flow through Court Liaison to ensure no ex parte communications occur
- Judge and Court Parties place case on WT Docket if in agreement

Service Plan



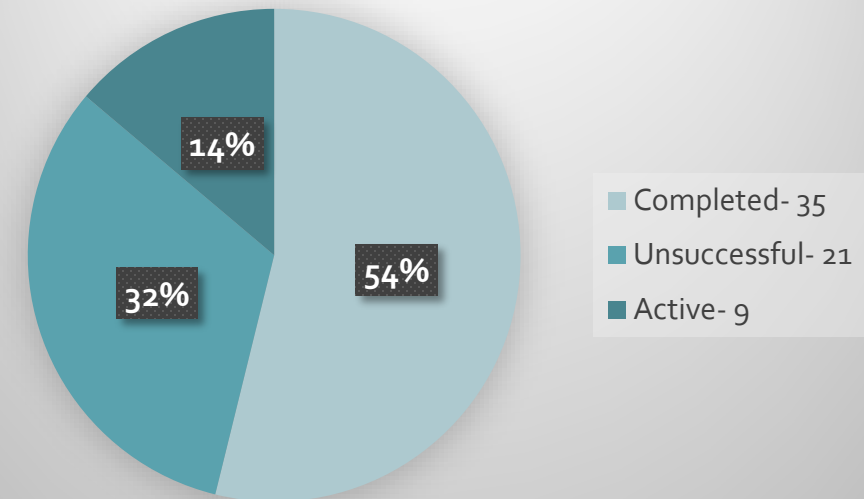
Case Outcomes

- Court Liaison assists in outreach between court dates as needed and provides court reminders
 - This addition, in the past quarter, has resulted in fewer Failures to Appear
- Upon successful connection to services or follow through with directives, State's Attorney's Office moves to dismiss the case
 - Dismissals are important for access to housing
- After multiple attempts if there is a lack of engagement, the case is returned to the misdemeanor courtroom to proceed

January 1, 2023- October 1, 2025:

- Over 227 participants agreed, 192 participated.
- 97 participants have completed conditions and had case dismissed.

2025 Wellness Track Participants



Civil Commitment or AOT as an Off-Ramp

November 5, 2025



TEXAS TECH UNIVERSITY

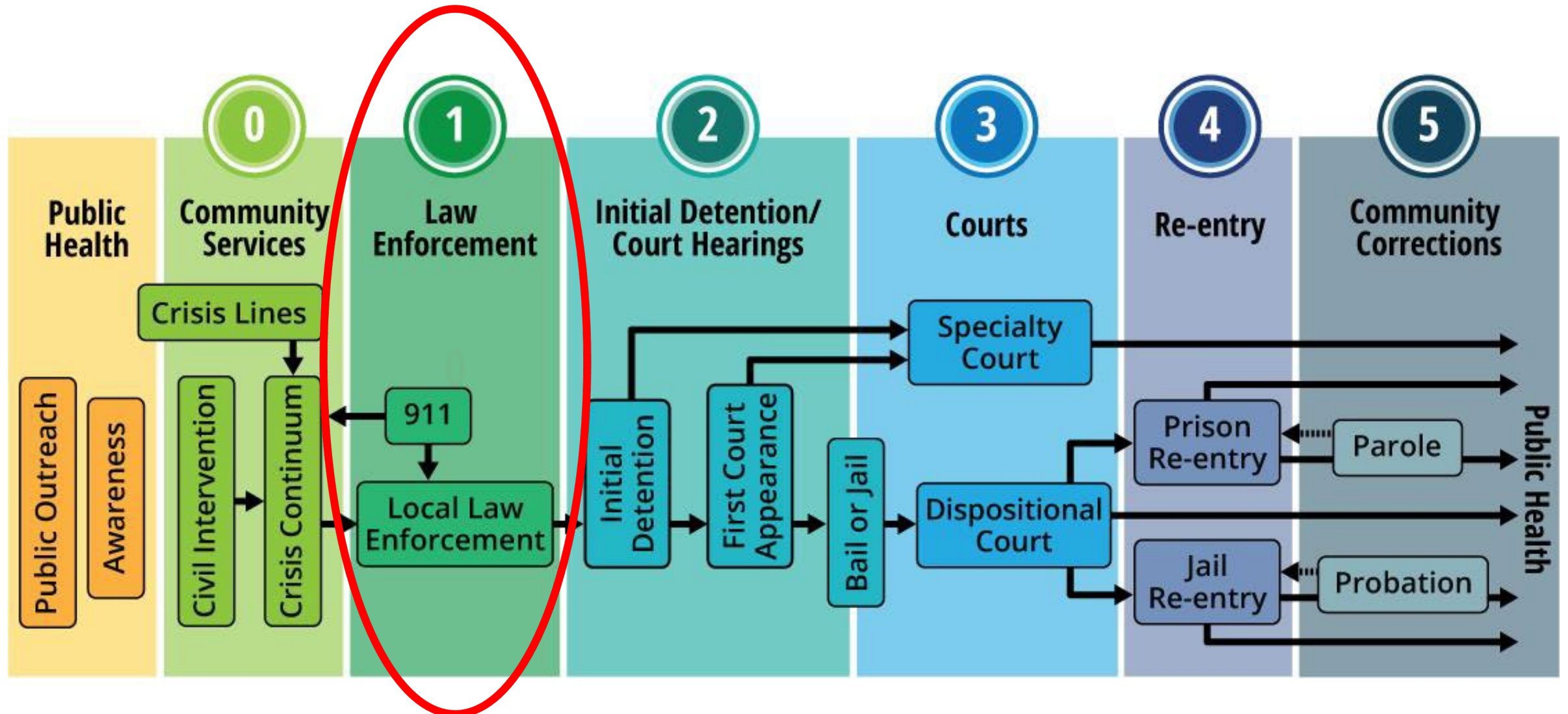
School of Law™

Prof. Brian Shannon

Hypothetical Scenarios

- Ann
- Ann 2
- Ann 3
- Etc.

Intercept 1: Law Enforcement



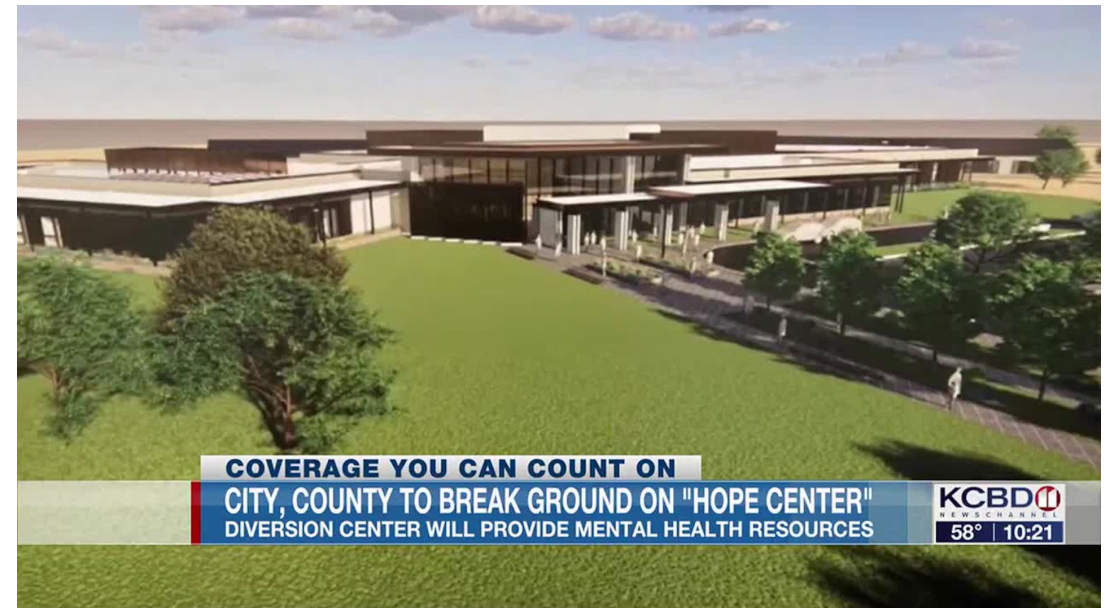
Pre-arrest/Non-arrest diversion

- A. Law enforcement discretion
- B. MCOT teams
- C. Co-responders



Pre-arrest/Non-arrest diversion

Mental Health Crisis & Diversion Centers



Revised Texas Statute: JCMH Initiative

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 573.001(a), Health and Safety Code, is amended to read as follows:

(a) A peace officer, without a warrant, may take a person into custody, regardless of the age of the person, if the officer[÷
[~~(1)~~] has reason to believe and does believe that:
(1) [~~(A)~~] the person is a person with mental illness[÷] and

[~~(B)~~] because of that mental illness;

(A) there is a substantial risk of serious harm to the person or to others [~~unless the person is immediately restrained~~];

(B) the person evidences severe emotional distress and deterioration in the person's mental condition; or

(C) the person evidences an inability to recognize symptoms or appreciate the risks and benefits of treatment; [and]

(2) the person is likely without immediate detention to suffer serious risk of harm or to inflict serious harm on another person; and

(3) [~~believes that~~] there is not sufficient time to obtain a warrant before taking the person into custody.

National Center for State Courts – Mental Health Task Force

- Model Code Workgroup



THE EQUITAS PROJECT
Disentangling mental health and criminal justice



Model Code Workgroup

- Report and recommendations for Model Legal Processes*
 - Guidance for Emergency Psychiatric Intervention
 - Guidance for Court-Ordered Mental Health Treatment
 - Medication over Objection
 - Pathways to Care in Criminal Justice Matters

- <https://www.mentalhealthcolorado.org/wp-content/uploads/2022/09/Model-Legal-Processes-to-Support-Clinical-Intervention-for-Persons-with-Serious-Mental-Illnesses-Final-9.2.2022.pdf>
- Additional resource: *Model Legal Processes for Court Ordered Mental Health Treatment - A Modern Approach*, 18 FIU L. Rev. 113 (2023), <https://ecollections.law.fiu.edu/cgi/viewcontent.cgi?article=1593&context=lawreview>

Model Code Workgroup

“Person requiring court-ordered treatment” means an individual who, as a result of mental illness and based on recent actions, omissions, or behaviors:

(a) presents a substantial risk of harm to self or others in the near future, which includes:

(i) suicidal behavior or inflicting significant self-injury; or

(ii) attempting, causing, or threatening to cause serious injury to others; or

(b) has demonstrated an inability to:

attend to basic physical needs such as medical care, food, clothing, or shelter; or protect the self from harm or victimization by others; or

exercise sufficient behavioral control to avoid serious criminal justice involvement; or

(c) lacks the capacity to recognize that they are experiencing symptoms of a serious mental illness and therefore are unable to:

make a decision regarding treatment; or

understand or retain information relevant to the treatment decision; or

use, weigh or appreciate that information as part of the process of making the treatment decision; or communicate the decision; or

appreciate the risks or benefits of treatment; and

in the absence of treatment is likely to experience a relapse or deterioration of condition that would meet the criteria in (a) or (b).²⁹

Model Code Workgroup

(c) lacks the capacity to recognize that they are experiencing symptoms of a serious mental illness and therefore are unable to:

make a decision regarding treatment; or
understand or retain information relevant to the treatment decision; or
use, weigh or appreciate that information as part of the process of making the treatment decision; or
communicate the decision; or
appreciate the risks or benefits of treatment; and
in the absence of treatment is likely to experience a relapse or deterioration of condition that would meet the criteria in (a) or (b).²⁹

Michigan

- (a) An individual who has mental illness, and who as a result of that mental illness can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another individual, and who has engaged in an act or acts or made significant threats that are substantially supportive of the expectation.
- (b) An individual who has mental illness, and who as a result of that mental illness is unable to attend to those of his or her basic physical needs such as food, clothing, or shelter that must be attended to in order for the individual to avoid serious harm in the near future, and who has demonstrated that inability by failing to attend to those basic physical needs.
- (c) An individual who has mental illness, whose judgment is so impaired by that mental illness, and whose lack of understanding of the need for treatment has caused him or her to demonstrate an unwillingness to voluntarily participate in or adhere to treatment that is necessary, on the basis of competent clinical opinion, to prevent a relapse or harmful deterioration of his or her condition, and presents a substantial risk of significant physical or mental harm to the individual or others.⁶¹

Arizona

“Persistent or acute disability” means a severe mental disorder that meets all the following criteria:

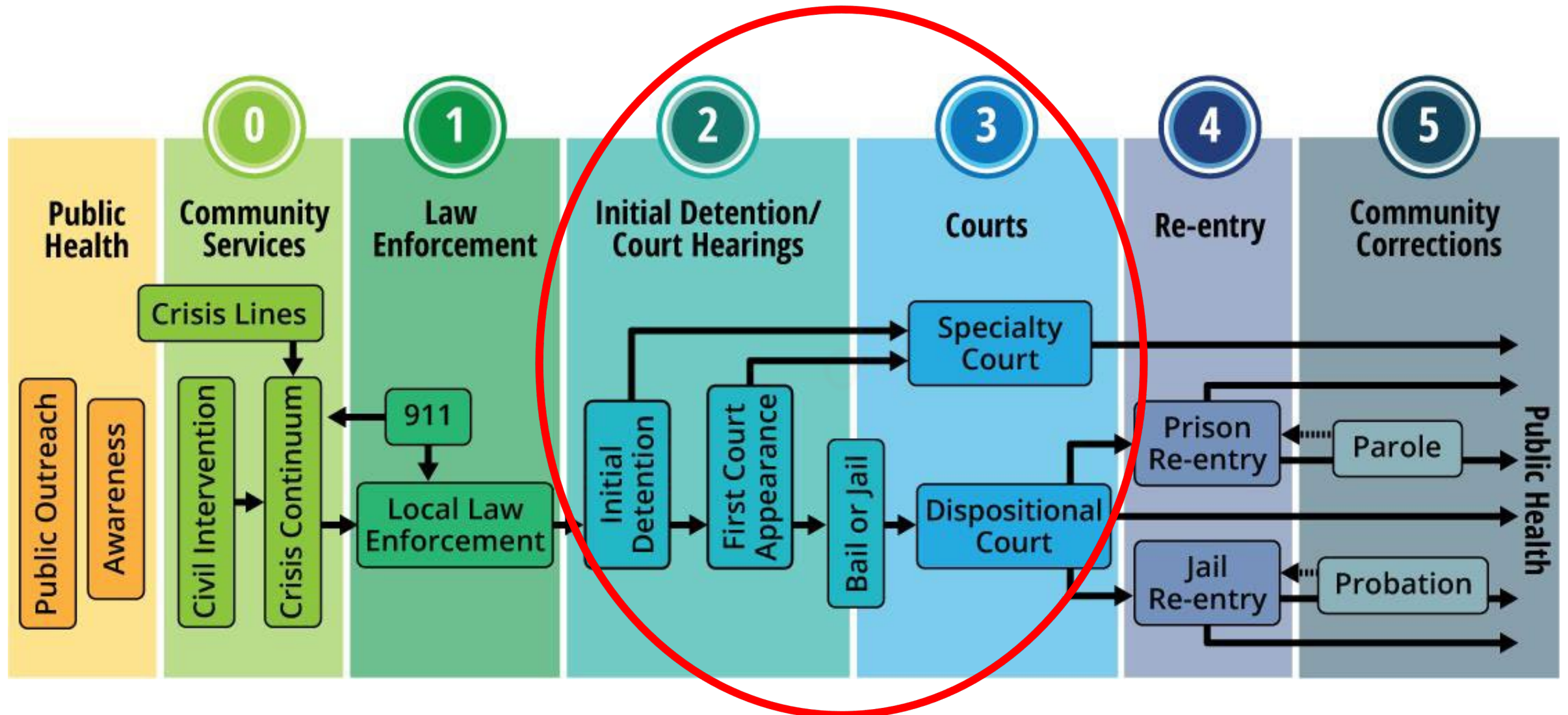
- (a) Significantly impairs judgment, reason, behavior or capacity to recognize reality.
- (b) If not treated, has a substantial probability of causing the person to suffer or continue to suffer severe and abnormal mental, emotional or physical harm.
- (c) Substantially impairs the person’s capacity to make an informed decision regarding treatment, and this impairment causes the person to be incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment and understanding and expressing an understanding of the alternatives to the particular treatment offered after the advantages, disadvantages and alternatives are explained to that person.

Post-arrest diversion

- E.g., Harris County Jail Diversion Desk
 - at the Harris County Joint Processing Center



Intercepts 2 & 3: Courts



Post-Booking Diversion to AOT

- Prompt MH Screening at the Jail
- Dismissal of Charges & Diversion to AOT, or
- Referrals under Art. 16.22(c)(5) for AOT
 - Charges Remain Pending

Dismissal & Diversion to AOT

- Dismissal of Charges & Diversion to AOT
 - Two courts?
 - One court – two dockets?
 - JCMH Legislative Proposal re certain misdemeanors

16.22 and AOT

(c) After the trial court receives the applicable expert's written report ... the trial court may, as applicable:

(1) resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article [17.032](#) if the defendant is being held in custody;

(2) resume or initiate competency proceedings, if required, as provided by Chapter [46B](#);

(3) consider the written report during the punishment phase after a conviction of the offense for which the defendant was arrested, as part of a presentence investigation report, or in connection with the impositions of conditions following placement on community supervision, including deferred adjudication community [supervision](#);

(4) [refer](#) the defendant to an appropriate specialty court established or operated under Subtitle K, Title 2, Government Code; 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 transferring the defendant to the appropriate court for court-ordered outpatient mental health services under Chapter [574](#), Health and Safety Code.

16.22 and AOT

- Referrals under Art. 16.22(c)(5) for AOT
 - Charges Remain Pending
 - Does the offense “involve an act, attempt, or threat of serious bodily injury to another person”?
 - Two courts?
 - One court – but two dockets?

Other options

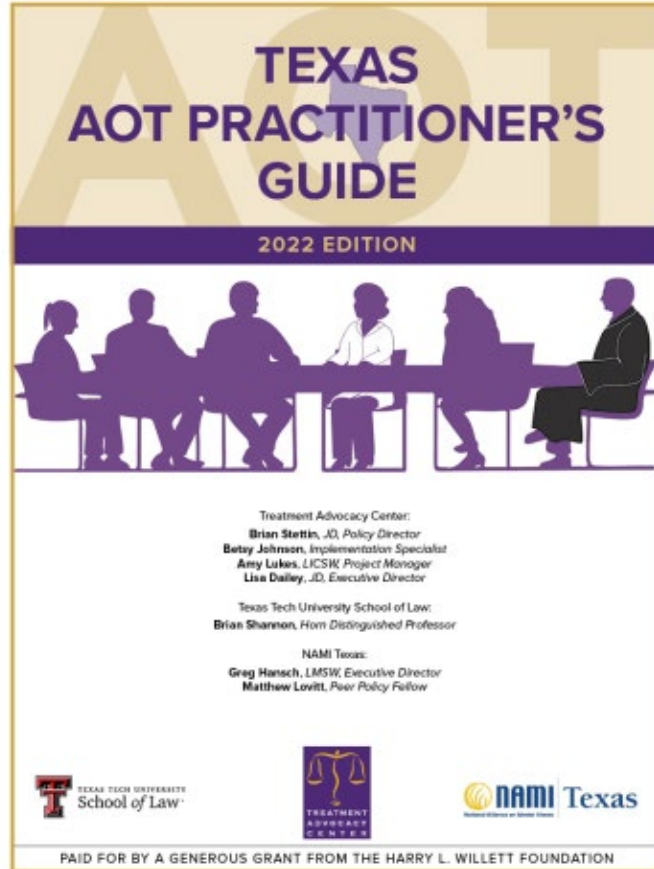
- **Possible Diversion to AOT for a Defendant Who is Subject to an Order for Competency Restoration Services but Who Remains in Jail Awaiting a Placement?**

Other options

- Possible Diversion to AOT for a Defendant Who is Subject to an Order for Competency Restoration Services but Who Remains in Jail Awaiting a Placement?
- **Possible Diversion to AOT if Defendant is “Un-restorable”?**

Other options

- Possible Diversion to AOT for a Defendant Who is Subject to an Order for Competency Restoration Services but Who Remains in Jail Awaiting a Placement?
- Possible Diversion to AOT if Defendant is “Un-restorable”?
- **Possible Dismissal of Charges and Diversion to AOT for a Defendant Who is Receiving OCR or JBCR Services?**



Parting Thoughts

- AOT works & has great potential!
- We need to expand its availability.

<https://texasjcmh.gov/media/svlj51l4/texas-aot-practitioners-guide.pdf>

Miami Dade Forensic Alternative Center (MD-FAC)

Judge Steve Leifman, (Ret.)

Virtual Presentation
November 5, 2025



SAMHSA
Substance Abuse and Mental Health
Services Administration

Miami-Dade County Forensic Alternative Center (MD-FAC)

- August 2009 – 11th Judicial Circuit of Florida and Florida Dept. of Children & Families
- Defendants 18 or older found ITP on 2nd or 3rd felony, no significant history of violent felony arrests, not likely to be incarcerated for alleged offense
- 16-bed, locked, inpatient residential treatment unit
- While providing restoration services, program focuses on community reintegration.
- Once restored, placed in community, monitored for 1 year

Main Study Findings

- Patient populations were comparable in demographic factors
- Patients admitted to MD-FAC were found to have lower recidivism rates in comparison with those admitted to a state hospital
- An admission to MDFAC doubled the chances that the patient would not return to jail in the year following discharge

Main Study Findings, Continued

- The amount of days an MD-FAC patient spent in jail the year following discharge was 2/3 less than state hospital patients
- The average length of stay at MD-FAC inpatient unit was 1/3 less than the length of stay at a state hospital
- The cost for inpatient admission to MD-FAC was 1/2 the cost of inpatient admission to a state hospitals
 - MD-FAC cost per admission \$33,667 versus \$74,419 for state hospital admissions

Main “Take-away” from MC-FAC Study

A patient admitted to MD-FAC had double the chances of staying out of jail the year following discharge, at half the cost and 2/3 the length of inpatient stay in comparison to a patient admitted to a state hospital.

Criminal Justice Standards on Mental Health

Standard 7-1.2. Responding to persons with mental disorders **in the criminal justice system**

- (a) “...recognize that people with mental disorders have **special needs** that must be reconciled with the goals of ensuring accountability for conduct, respect for civil liberties, and public safety.”
- (b) “...work with community mental health treatment providers and other experts to **develop valid and reliable screening, assessment, diversion, and intervention strategies**

American Bar Association (ABA), Continued

Criminal Justice Standards on Mental Health

Standard 7-1.5. Role of the **judge and prosecutor** in cases involving defendants with mental disorders

- (a) “...consider treatment **alternatives to incarceration...**”
- (b) “...**facilitate meetings among community organizations** interested in assuring that services are provided to justice-involved persons with mental disorders”
- (e) In determining which defendants should be selected for participation in diversion programs, **rely on evidence-based practices, including valid and reliable appraisals of relevant risk and treatment needs.**

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