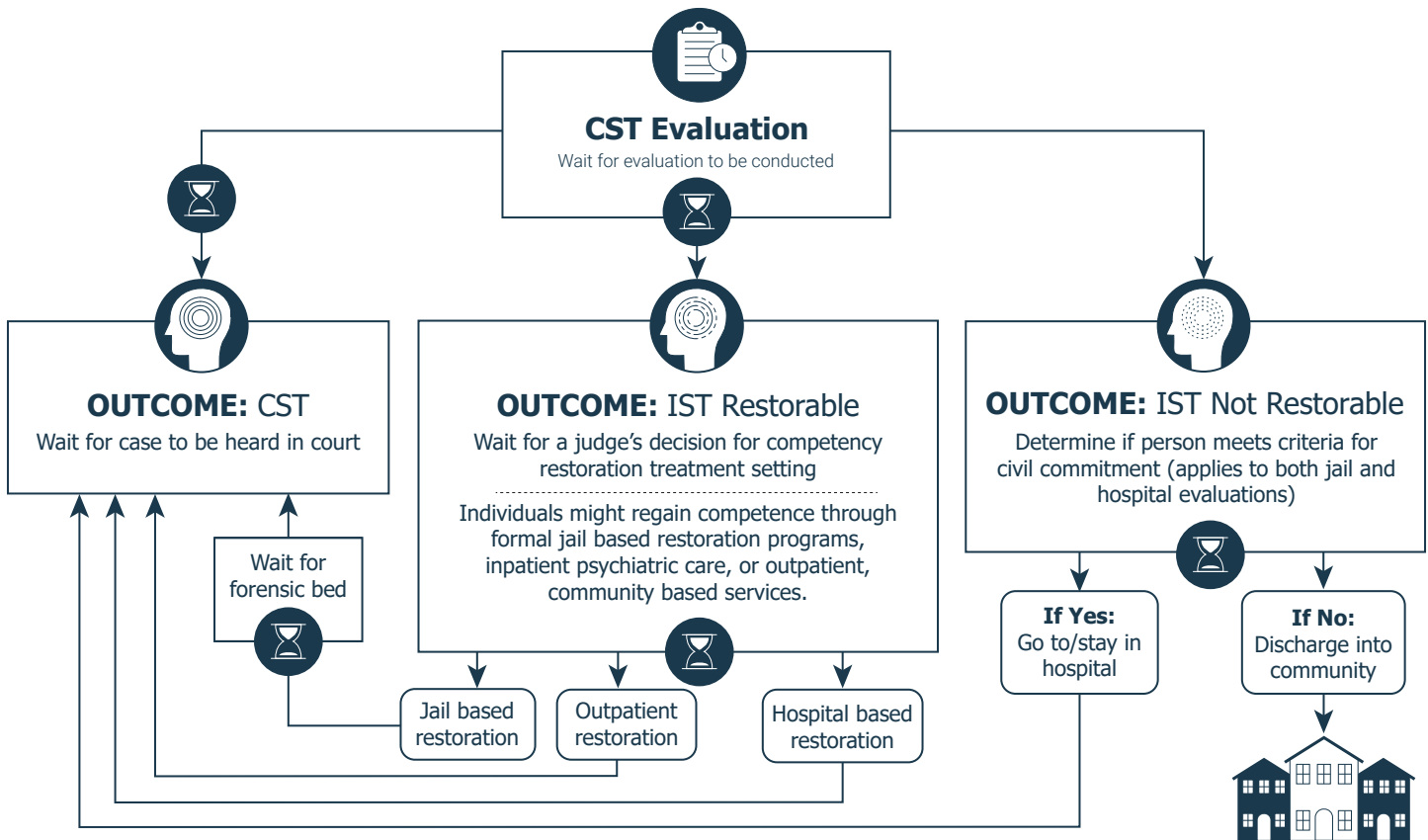


Waitlists in the Competence to Stand Trial System

RESOURCE DOCUMENT

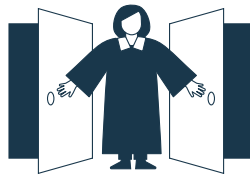
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The Unseen Waitlists

Contrary to what many believe, waitlists are not a single, unified entity.

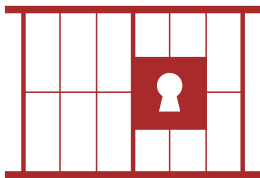
There has been recent focus on waitlists for competence to stand trial and competence restoration. Importantly, there is not just one waitlist resulting in backlogs and people waiting in jails. There are numerous unseen waitlists related to trial competence. Defendants at various points in the process may have to wait for a competence evaluation, wait for a hearing date for a judge to decide on competence, and then, if found not competent, wait for an available bed at the state hospital. When restoration treatment has nearly finished, the defendant is once again waiting for a new hearing date and likely waiting to access community-based housing or ongoing treatment services. These multiple waitlists have far-reaching consequences, including a shortage of beds in state hospitals and the ethical dilemma of detaining pre-trial individuals for potentially lengthy periods of time. It's crucial to ask who these individuals are, where they are located, why are they there, what services they await, and whether their presence in jail is justified.



The Front Door/ Back Door Problem

The number of individuals ordered for competence evaluations and inpatient restoration has increased significantly over the last ten years. For example, one Colorado report found that the number of court-ordered restorations **increased from 87 in 2001 to 900 in 2017**. If states rely solely on inpatient forensic beds for evaluations and restoration treatment, there will never be enough beds.

Judges have the authority to decide if a defendant is incompetent to stand trial (IST), whether they have been restored to competence and can begin their trial, their release or transfer status, and whether treatment for restoration should take place in a state hospital, the community or other location. Although these decisions are often made with testimony or reports from clinical evaluators, judges have historically relied on the state inpatient facilities to complete this work. There has been hesitation to change practices and order restoration or evaluations in outpatient settings. When defendants are ordered to the highest level of care, inpatient facilities, without consideration of their actual risk or treatment needs, psychiatrically stable defendants with non-violent charges and may be delaying admission for a more appropriate patient.



Unreasonable Confinement in Jails

Regardless of evaluation outcome, or treatment setting, many individuals who have been charged with nonviolent, misdemeanor crimes spend more time in jails waiting for evaluation and restoration services than what they would have served if they had been convicted. These individuals and their communities are left bearing substantial financial, resource, and behavioral health burdens due to waitlist and assessment durations that can span weeks or months.



Diversion First

The primary way to reduce the number of people impacted by the multiple waitlists is to prevent entry into the waitlists at the beginning. Encouraging mental health crisis care instead of arrests when appropriate and utilizing community-based diversion programs instead of pursuing prosecution for nonviolent misdemeanors reduces the number of individuals requiring an evaluation. Community-based evaluation and restoration programs also reduce the number of defendants waiting for scarce inpatient hospital beds. At all points in the process, it is necessary for prosecutors and judges to exercise discretion and determine if prosecution and continued involvement in the criminal legal system is appropriate for individuals with serious mental illness charged with nonviolent offenses.

Information for this document derived from, "Substance Abuse and Mental Health Services Administration. (2023). *Foundation work for exploring incompetence to stand trial evaluations and competence restoration for people with serious mental illness/serious emotional disturbance*. HHS Publication No. PEP23-01-00-005. Rockville, MD: Substance Abuse and Mental Health Services Administration."