

# 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.<sup>1</sup> 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).

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

**2,856**

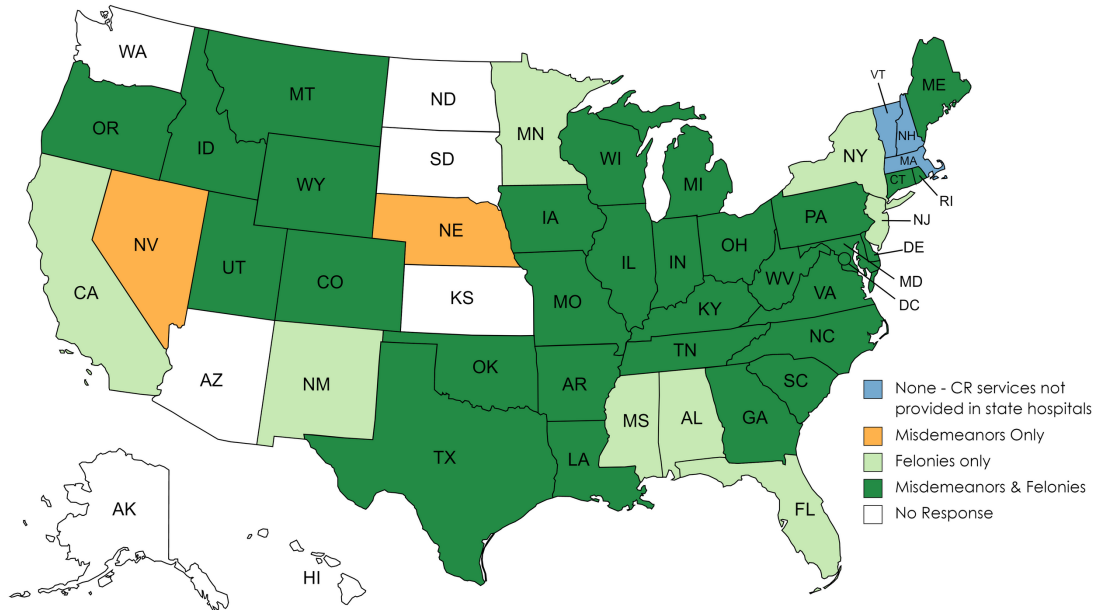
defendants are ordered for outpatient CR services annually

**143**

Average length of stay (days) for inpatient CR services

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## Inpatient CR Services SMHAs Provide, by Type of Criminal Charges



## Average Length of Stay for Inpatient CR

The average length of stay (LOS) for inpatient CR services is 142 days across 32 states, ranging from a minimum 49 days to a high of 365. In 27 states, there is a specific limit on how long a defendant may be committed for inpatient CR services. The time limit for defendants with misdemeanor charges may be committed for inpatient CR in 23 states ranges from a low of 30 days to a high of 3,650 days—in five states, the time limit is under 90 days and in 15 states, it is over 200 days. For defendants facing felony charges, the time limit in 15 states ranges from a low of 33 days to a high of 1,095 days—in two states, the time line is under 90 days and in 10 states, it is over 200 days. For capital charges, the time limit in 13 states ranges from a low of 60 days to a high of 1,095 days—in one state, the time limit is under 90 days and in 10 states, it is over 200 days.

## Waiting Lists for IST Patients for Inpatient CR Services

Twenty-seven (27) SMHAs have a waiting list for IST patients to be admitted to a state hospital for CR services. SMHAs are undertaking different actions to reduce the amount of wait time for CR services. For example:

- In Arkansas, the SMHA has a task force of stakeholders that are attempting to address the bed space issues.
- In Missouri, the SMHA is making efforts to expedite discharge of clients that are in inpatient facilities to increase bed availability. There is a pilot project for outpatient CR as well as a mobile team comprised of nurse practitioners, registered nurses, and social workers to initiate clients on medication, if incarcerated in county jails; and if on bond, connect them to community mental health resources.
- In Mississippi, the SMHA has increased CR beds by 140% and provides jail-based competency education services prior to admission to the state hospital.

**For additional information about this Report, or the State Profiles Project,  
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