

Just and Well: Rethinking How States Approach Competency to Stand Trial

Executive Summary

The Constitution makes clear that a criminal case cannot proceed unless the person who is accused understands the charges and is able to assist in their own defense. When a judge, prosecutor, or defense attorney is concerned that a person may not be “competent” to stand trial, the person may be ordered to undergo an evaluation. If found “incompetent,” they will often enter a process of restoration and, once restored, their case will proceed.

It sounds straightforward enough, but across the country, many states are facing a common problem: competency to stand trial (CST) processes are increasingly crowded and delayed. More and more people are being referred for evaluation and restoration, and their wait times have increased to lengths that have been found unconstitutional in some places. As they wait, too many people languish in jail—a setting where those with behavioral health needs tend to get worse, not better. Some are even spending longer amounts of time being evaluated and restored than they would potentially spend in jail if they were convicted of their charges. And when they return to the community, often after charges are dismissed, they reenter without access to mental health treatment.

States are also questioning their return on investment. CST processes can be expensive, and even more so when they are drawn out by delays. Because the purpose of restoration is to prepare a person to participate in a legal process, raising a person’s competency is not the equivalent of, or a substitute for, getting them the behavioral health treatment that many people involved in CST processes need for their long-term recovery. The money states are spending too often fails to meet their goals of making the criminal adjudication process fair, protecting public safety, and improving health outcomes for people in need.

Seeking solutions to these serious challenges, the organizational co-authors of Just and Well: Rethinking How States Approach Competency to Stand Trial gathered a group of national advisors to find a way forward. The report represents a consensus view of the challenges that states face, as well as a shared vision of what an ideal CST process should look like.

According to this vision, CST would be reserved only for cases where the criminal justice system had a strong interest in restoring competency so that a person may proceed to face the charges against them. Advisors noted that the justice system’s interest in adjudicating a case will tend to rise as the charges become more serious. In all other situations, when the state’s interest in prosecution is lower, people would have their cases dismissed and/or would enter a diversion program in lieu of typical CST processes. If they were in need of treatment, they would be connected to care in a setting appropriate to their clinical level of need. In this vision, jurisdictions would also focus on preventing criminal justice involvement in the first place through the establishment of robust, community-based treatments and supports that are accessible for diverse communities.

For people whose cases appropriately proceed for competency evaluation, and where needed, restoration, the streamlined CST process they encounter would place them in the least restrictive environment possible from a range of available settings. This process would also include centrally qualified evaluators and clear accountability for systematic quality, efficiency, and equity, and it would always be paired with a robust treatment plan that follows the individual.

This report lifts up 10 specific strategies that states can pursue to realize this vision, making their CST processes more just and promoting wellness for people who enter those processes. These strategies do not represent guesses about what might work. They are built from lessons learned by states that are already rethinking their approach to CST.

Rethinking Competency to Stand Trial: The Strategies

The 10 tested strategies for bettering the CST process are:

Strategy 1: Convene diverse stakeholders to develop a shared understanding of the current CST process.

Strategy 2: Examine system data and information to pinpoint areas for improvement.

Strategy 3: Provide training for professionals working at the intersection of criminal justice and behavioral health.

Strategy 4: Create and fund a robust system of community-based care and supports that is accessible for all before, during, and after criminal justice contact.

Strategy 5: Expand opportunities for diversion to treatment at all points in the criminal justice system, including after competency has been raised.

Strategy 6: Limit the use of the CST process to cases that are inappropriate for dismissal or diversion.

Strategy 7: Promote responsibility and accountability across systems.

Strategy 8: Improve efficiency at each step of the CST process.

Strategy 9: Conduct evaluations and restoration in the community, when possible.

Strategy 10: Provide high-quality and equitable evaluations and restoration services, and ensure continuity of clinical care before, during, and after restoration and upon release.

To read the full report, check out [Just and Well: Rethinking How States Approach Competency to Stand Trial](#).

The Council of State Governments (CSG) Justice Center prepared this report in partnership with the American Psychiatric Association Foundation (APAF), the National Association of State Mental Health Program Directors (NASMHPD), the National Center for State Courts (NCSC), and the National Conference of State Legislatures (NCSL) as a project of the Judges and Psychiatrists Leadership Initiative (JPLI).