

ROBUST COMPETENCY EVALUATION AND RESTORATION PROGRAM: KANSAS



“We are working towards a robust statewide system where people with mental health issues are able to have them resolved without having to stand trial, or if needed, competency evaluation and restoration services that allow them to have fair and speedy trials.”

–Andrew Brown, Commissioner, KDADS

VISION

When judges doubt a criminal defendant's ability to understand the nature and consequences of the court process, they may order the defendant's competency to be evaluated and if found wanting, restored. Requests for competency evaluation has grown annually having reached 60,000 cases nationwide.¹ Many requests must await an opening in state hospitals where competency evaluation and competency restoration (CECR) are most often conducted. Figure 1 (on next page) depicts the process of CECR. Defendants can wait days, weeks, and months for CECR, in some cases, exceeding the time they would have to serve if found guilty.

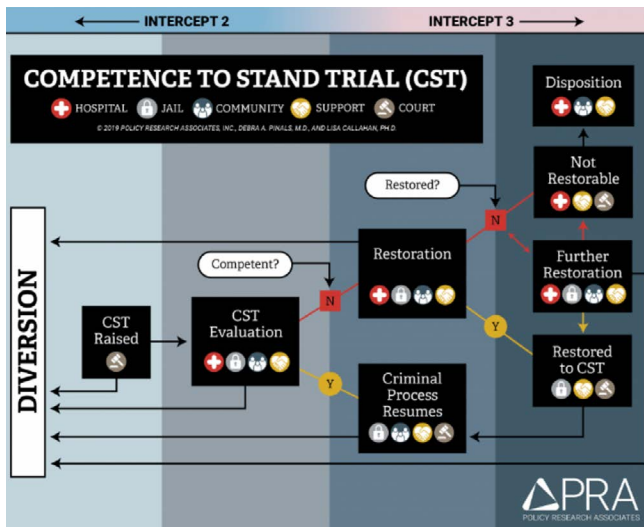
Moreover, while CECR prepares defendants to understand and participate in their trials, it does not necessarily address a range of clinical and social needs, such as co-occurring substance use challenges, housing needs, occupational needs and supports, and other important related issues.² To reduce wait times and integrate treatment, the Behavioral Health Division of the Kansas Department for Aging and Disability Services (KDADS), is moving towards conducting CECR in other settings including jails and community outpatient settings for low-risk defendants. KDADS

developed a multipronged approach to reduce demand for CECR by preventing arrests that lead to involvement with the justice system, diverting involved individuals before trial, and conducting CECR in the community for those so ordered. To establish the infrastructure needed to implement these approaches, KDADS engaged community and state partners in planning, informed enabling legislation, established department policy changes, and secured funding for community agencies to deliver community CECR and diversion services.

JAIL DIVERSION APPROACH

KDADS identified three opportunities to divert individuals who are at risk of CECR mainly through its expansion of Certified Community Behavioral Health Clinics (CCBHCs). CCBHCs establish liaisons with local jails and law enforcement agencies that open pathways for diversion, CECR, and treatment to people with behavioral health disorders who are at risk or involved in the justice system. KDADS has established a Stepping Up Technical Assistance Center to support local collaboration between agencies including courts that serve as exemplars on pre-trial diversion, community based CECR, and specialized courts. In areas of the state in which it is available, ▶

FIGURE 1: COMPETENCE PROCESS FLOWCHART DEPICTED BY POLICY RESEARCH ASSOCIATES



Assisted Outpatient Treatment (AOT) is being offered to defendants undergoing community based CECR.

MEASURING PROGRESS

Process measures include the number of partners engaged in the planning process, the number of policy changes, and the amount of funding appropriated to diversion and to jail and community based CECR strategies.

KDADS intends to use the CECR state hospital waitlist and days waiting by municipality to measure the impact of implementation.

INTEGRATION WITH CRISIS SYSTEM

Tying the expansion of mobile crisis teams to CCBHCs, KDADS has submitted a state plan amendment to CMS to fund CCBHC services. KDADS has certified 9 CCBHCs and expects to certify 16 more in the next few years that will provide coverage to all areas of the state. CCBHCs are also integrated with 988 and provide crisis response and back-up for calls. Kansas has short term crisis stabilization units and crisis intervention centers (CICs). CICs can safely detain individuals up to 72 hours for psychiatric evaluation.

Both facilities accommodate individuals transported there by police and have qualified staff on duty to assess medical needs.

BEHAVIORAL HEALTH EQUITY

While CECR was instituted to safeguard an individual's right to understand the nature of the charges and evidence against them, long waits may violate their right to trial without unnecessary delay. Lengthy waits for CECR can have a devastating impact on people's lives and may disproportionately affect those who are black and brown, poor, and alone. A meta-analysis of CECR studies over the past 15 years found several common characteristics of people more likely to be found incompetent as unemployed, receiving social security disability income, unmarried, older aged, and non-white.

PROJECT LEGACY

The multipronged approach funded by TTI has resulted in several favorable advances that will have a long-lasting impact including:

- Community-based CECR was authorized and funded by state legislation.
- Mental health center budgets have been increased to accommodate grants and contracts for forensic services, and
- The state's Chief Justice held a statewide conference on pre-trial diversion and CECR.

WHAT HAS BUILDING AN INFRASTRUCTURE FOR CECR TAUGHT US?

Although the project's intent was to make internal policy and funding changes to support community based CECR, its impact is felt beyond the mental health system. External stakeholders, especially the courts, must be consulted early in the process, not only to improve legislation and expand its base of support, but to improve its implementation.

For more information on this project, contact Andy Brown at Andrew.brown@ks.gov.

¹ Competency Restoration for Adult Defendants in Different Treatment Environments. Graham S. Danzer, Elizabeth M.A. Wheeler, Apryl A. Alexander, Tobias D. Wasser. *Journal of the American Academy of Psychiatry and the Law Online* Feb 2019, JAAPL.003819-19; DOI: 10.29158/JAAPL.003819-19

² Evaluation and Restoration of Competence to Stand Trial: Intercepting the Forensic System Using the Sequential Intercept Model. Debra A. Pinals and Lisa Callahan. *Psychiatric Services* 2020 71:7, 698-705.