

Jail-Based Competency Restoration in Douglas County Correctional Facility

DOUGLAS COUNTY BAR ASSOCIATION

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Presentation Agenda

Competency Overview

Project Workgroup Members and Background

State of Competency Restoration

- Process
- KDADS Mobile Restoration Program
- Outpatient Restoration Options from KDADS

Local Process for Douglas County

Role of Defense Attorneys in Local Process

Competency Law

Due Process Clause of the 14th Amendment prohibits criminal prosecution of a defendant who is not competent to stand trial.

K.S.A. 22-3301(a): A person is “incompetent to stand trial” when such person is charged with a crime and because of mental illness or defect is unable to understand the nature and purpose of the proceedings against them or to make or assist in making their defense.

***State v. Barnes*, 293 Kan. 240, 256, 262 P.3d 297, 309 (2011):** A criminal defendant may not be tried unless he or she has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding ... and a rational as well as factual understanding of the proceedings against him.

Competency Law

K.S.A. 22-3302 Proceedings to determine competency

K.S.A. 22-3303 Commitment of incompetent defendant

Workgroup Members

Co-Facilitators:

- Patrick Schmitz, CEO, Bert Nash
- Katy Fitzgerald, Criminal Justice Coordinator, Douglas County

Bert Nash:

- Carrie Combs
- Dr. Cord Huston
- Dr. Nana Dadson
- Paul Leffingwell
- Sara Godinez

Douglas County Sheriff's Office:

- Sheriff Jay Armbrister
- Major Gary Bunting

Association of Community Mental Health Centers of KS:

- Andrea Diaz-Buezo

7th Judicial District:

- Chief Judge James McCabria

Douglas County:

- Bob Tryanski

Current State of Competency Restoration in Kansas

Current Process of Restoring Competency:

- Evaluation is Ordered
- Incompetent to Stand Trial Determined
- Restoration of Competence Ordered
 - To be completed by Larned or its agent
- Waitlist for Larned placement, generally held in custody while waiting
 - Average wait time for Larned 14 months
 - Some defendants can be sent to OSH

Mobile Restoration Pilot Program

- Began in Spring 2022
- Eligibility criteria limits participation

Opportunities Developed by KDADS for Outpatient Restoration

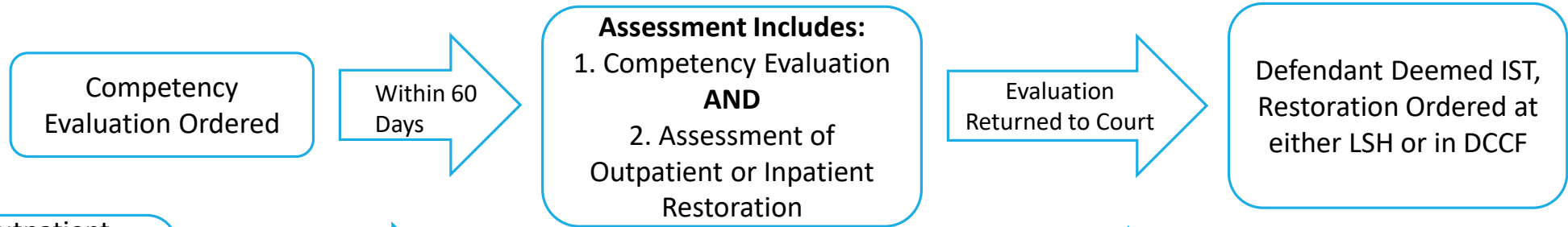
- Definition: Competency Restoration not provided in a state hospital or state facility

Program Goal in Douglas County:

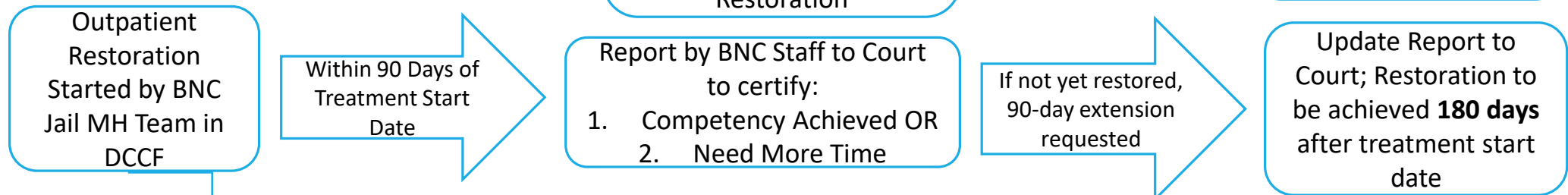
- Reserve the spaces at Larned State Hospital for those most severe cases by providing the necessary services at the local level for clients who may not be as severe in need

Process: Initial Evaluation Includes Assessment of Inpatient or Outpatient Restoration

Steps of Competency Evaluation and Order for Restoration:



When Outpatient Restoration is Ordered:



If Inpatient restoration needed:

At any point, within 10 days of termination of outpatient services, report indicating such submitted to Court and Larned. **Original Order Date** used to determine placement on waitlist.

When Inpatient Restoration is Ordered:



Notes:

- If a Defendant will need inpatient restoration at Larned, their placement on the waitlist is based on the *original order date of restoration* and is not based on the date that local restoration was terminated.
- For these Defendants, the Court and Larned will need to receive a report indicating that outpatient restoration has ceased and that inpatient restoration is recommended. This report needs to be submitted within 10 days of the outpatient termination date and a new order for restoration will need to be issued by the Court.

Competency Restoration Process

Primary Components of Competency Restoration:

- Psychoeducation
- Medication as Prescribed
- Reassessment for Competency post restoration

Medication Over Objection

22-3303(f)(1)

Psychotropic medications may be prescribed for any defendant who is ordered or has met criteria to receive evaluation and treatment on inpatient or outpatient basis at appropriate state, county or private institution/facility.

Role of Defense Counsel in Process

Respond to and Maintain contact with the Jail MH Team, particularly when:

- Restoration completed: A new hearing date is needed
- Defendant becomes appropriate for local restoration: A new order from the Court is needed
- Local restoration is terminated and inpatient is needed: A new order is needed and the Court needs to receive this notice within 10 days of the termination date

When to request competency evaluation

Timelines start and are often dependent on defense

Role In Medication Over Objection hearing

Other example Orders/Documents

10-day termination letter

Orders that would be drafted by Defense for 3302 and/or 3303

Outpatient (Local) Restoration Implementation

Program Launch Date: April 1, 2024

Measures to Track and Monitor Impact:

- Number of Defendants Referred:
 - Outpatient Restoration
 - Inpatient Restoration
- Length of Time (For Both Inpatient Referrals and Outpatient Referrals)
 - Between Restoration Order and Treatment Start
 - In Restoration
 - In Custody
 - To Case Disposition
- Outcome of Outpatient Program (Competency Restored/Achieved, Referred to Inpatient)
- Number of Defendants who need Medication over Objection Orders
- Number of Defendants who need re-evaluation of competence and additional restoration after completion of restoration
- Number of Defendants Referred Initially to Inpatient but Later Referred to Outpatient

Questions
