



# Indiana State Psychiatric Hospital Network

## Competency Restoration Training Guide for Practitioners

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## COMPETENCY RESTORATION TRAINING GUIDE FOR PRACTITIONERS

In 2020, the Indiana Division of Mental Health and Addiction launched several pilots that provide competency restoration services outside of the state psychiatric hospital network to consumers in an alternative setting. These pilots rapidly grew to programs that continued to provide restoration services to those individuals in need.

This Practitioner's Guidebook serves as a resource for our third-party collaborators to provide a universal understanding of the many components of working with those that have been found incompetent to stand trial.

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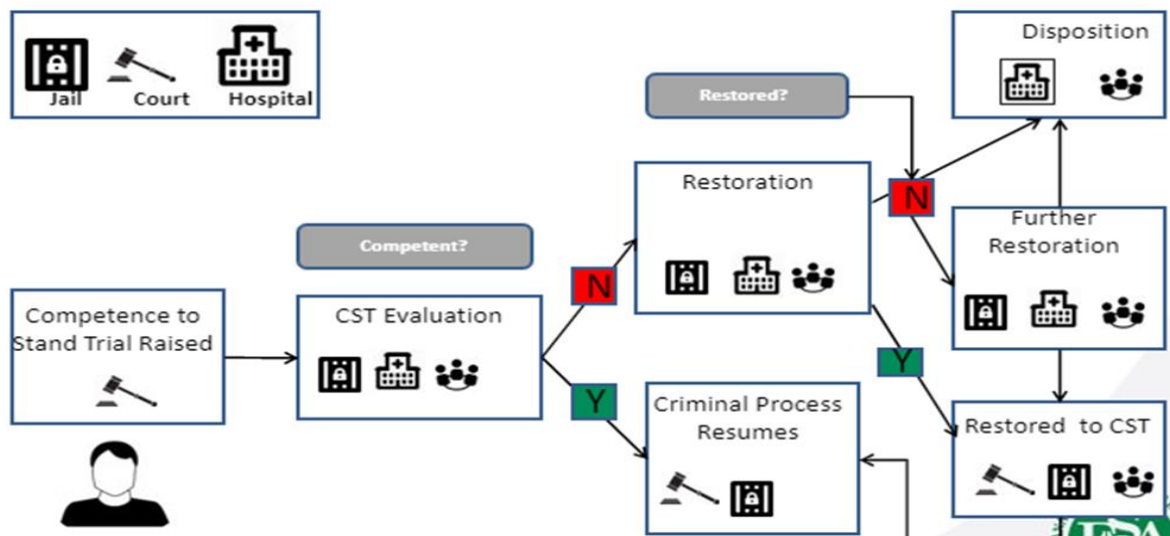
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## INTRODUCTION TO INCOMPETENT TO STAND TRIAL

### LEGAL PROCESS

Competency restoration is the process used when an individual charged with a crime is found by a court to be incompetent to stand trial, typically due to an active mental illness or an intellectual disability. (Horton, 2013) A criminal defendant must be restored to competency before the legal process can continue.

Competency Restoration Services are specialized and court-ordered for individuals who have been determined incompetent to stand trial. Below is a graphic that illustrates the high-level Competency Restoration Process.



Description of Graphic:

1. A defendant is ordered for evaluation when any of the following question competence: a prosecutor, attorney, judge, or law enforcement officer.
2. Two or more professionals (psychiatrists, psychologists, or physicians) are required to evaluate the defendant. The professionals cannot be employed/contracted by a state institution.
3. If deemed incompetent, the defendant is committed to DMHA. DMHA is then responsible for providing competency restoration services to the defendant in a state psychiatric hospital or by a third-party contractor.
4. While receiving competency restoration, reports must be made to the court every 90 days.
5. After 90 days, if the defendant's competency is not restored, they stay in the hospital for an additional 90 days. If they are not restored by 180 days, DMHA seeks a civil commitment by law.
6. The court would then request a renewal of the commitment annually until the charges are dropped or the defendant is restored to competency and declared competent to stand trial.

*For more information, please refer to Indiana Code 35-36-3-1.*

## *JACKSON V. INDIANA*

In 1968, Theon Jackson was charged with two counts of theft, the sum of items being \$9.00. Theon Jackson was deaf, mute, and believed to be cognitively impaired. Psychiatric examiners stated that there was little to no probability that he would ever be competent to stand trial. He was committed to Indiana Department of Mental Health per statute until he was deemed “sane” (competent).

The Jackson case eventually went to the Supreme Court. There, they compared the statutes for individuals deemed incompetent to stand trial and traditional state hospital commitments. They determined that holding a person indefinitely for incompetence to stand trial violated the Fourteenth Amendment. Furthermore, if a person could not be “restored to sanity” then that individual should go through the traditional commitment process where they had more rights.

After the Jackson ruling, Indiana was at a crossroads and went to work revising its competency statutes. It now requires the Department of Mental Health and Addictions (DMHA) to seek civil commitment after six months of attempted competency restoration.

## ALTERNATIVE RESTORATION IN INDIANA

Although Indiana statute had permitted DMHA to contract with third parties for competency restoration services for many years; this had never been done. Alternative Competency Restoration is simply restoration services provided to an individual outside of a State Psychiatric Hospital.

Once individuals are ordered to receive restoration services through the Division of Mental Health and Addiction, each is screened and assessed for appropriateness into all Competency Restoration programs based on numerous factors and individuals with higher acuity and more complex needs receive expedited access and openings into the State Hospitals.

In Indiana, there are currently two Alternative Competency Restoration programs: Project CREATE and Jail-Based Competency Restoration. As the pursuit of eradicating the waitlist continues, the number and types of programs are expected to grow and evolve to best meet the needs of the justice-involved Hoosiers that are served by the State Psychiatric Hospital Network.

### **Project CREATE**

DMHA launched a pilot program called Project CREATE (Covid Related Emergency Access to Therapeutic Environments) in late 2020 during the height of the COVID-19 pandemic. Indiana county jails were consumed with a large number of individuals deemed incompetent to stand trial (ICST) amongst their general population. The county jails were attempting to implement infection control protocols to prevent outbreaks amongst their offender population and their staff. The necessity to segregate those suffering with severe mental illness was becoming increasingly challenging as space was needed for quarantine settings.

In response, DMHA partnered with private psychiatric hospitals to expedite restoration services for those waiting in jail for a state hospital bed. DMHA reviewed all current and in good standing, certified private psychiatric hospitals and began to reach out to explore viable partnerships. These private hospitals reviewed and assessed individuals ordered incompetent to stand trial and would admit those that they felt were appropriate for treatment within their hospitals.

The private hospital would then provide competency restoration services, including psychiatric support, medication management, therapy, and legal education to the CREATE patients with the goal of restoring the patient within 90 days of admission.

It should be noted; the team at the NeuroDiagnostic Institute (NDI) provided tele-health services for the competency evaluation and ongoing legal education services as well as ad hoc consultation to the Valle Vista and Wellstone teams throughout the pilot phase of this program. The collaborative effort of our private partners and the NDI team allowed for this pilot to create a strong foundation for success, allowing for the CREATE facilities to organically grow their programs and eventually overtake the responsibility of legal education.

If a patient is anticipated to not be restored within the 90 days, they will be transferred to the partnering State Psychiatric Hospital- the NeuroDiagnostic Institute for continued restoration services.

These pilot hospitals, as a result of their success, transitioned into full programs and an additional third private hospital was added. Our CREATE acronym has also been revised to reflect the changing times, ***Competency Restoration Expedite Access to Therapeutic Environments***.

### **Jail-Based Competency Restoration**

With the collaborations of the State Psychiatric Hospitals (SPH), the local Community Mental Health Centers (CMHC), and the county jails, the Indiana Division of Mental Health and Addiction (DMHA) created a pilot Jail-Based Competency Restoration program. This program was specifically for individuals who have been ordered to undergo competency restoration and who are incarcerated in pilot county jails. Not only does the individual receive immediate competency restoration services in the jail, but it also expedites the process of restoration, reduces the forensic waitlist, and provides a built-in re-entry resource as the individual will be receiving services from a Community Mental Health Center that can provide uninterrupted outpatient services to the individual post-release from incarceration.

The individual receives psychiatric and therapeutic support and medication management, as well as psychoeducation and skill building services by the Community Mental Health Center while incarcerated in the jail to aid the individual in stabilizing their mental health and gaining the necessary knowledge and skills that will allow them to be considered competent to stand trial by Indiana Code Standards. Once the restoration team believes an individual to be competent, an evaluator from the partnering SPH will meet with the participant and evaluate competency.

## RESTORING COMPETENCY

### COMPETENCY VS. INCOMPETENCY

To be competent means having the necessary knowledge, skill, or ability to do something successfully.

Does a 6-year-old have the competency to cook a full meal? No, the 6-year-old doesn't have the full competency because they don't understand the hazards of cooking or the concept of time. They also don't have the knowledge of ingredients or measuring even if they are physically able to mix things together.

Does your partner have the competency to purchase off a list at the grocery store? Your partner is assumed to know how to make purchases, have the skill to buy the best deals, and possess the physical ability to put items in the cart and swipe the debit card at the cash register. Therefore, they are competent.

When it comes to competence and incompetence within a criminal case, professionals look to what is commonly referred to as the Dusky Standard, names after the landmark Supreme Court case addressing competency to stand trial.

In the 1960 case of *Dusky v. United States*, the Supreme Court determined that due process does not permit the trial of persons who do not possess a rational and factual understanding of the proceedings, and who lack the ability to cooperate with their attorneys with a reasonable degree of rational understanding."

Patients that are deemed incompetent don't have the necessary knowledge, skill, or ability to understand legal proceedings based on their mental health conditions. They often don't understand who the people are, what the terms mean, what the process is, the why or how behind what is happening. (Franz, A. 2017)

When a defendant is deemed incompetent it is because they lack the ability to understand court proceedings and play a role in their defense. This person does not understand the charges against them and what is happening from a legal standpoint.

Incompetent to stand trial status should not be confused with the plea of Not Guilty by Reason of Insanity. ICST means that they must receive legal education in order to be restored to competency, and this is before they have gone to trial. Not Guilty by Reason of Insanity is a plea offered during the trial and/or a verdict at the end of the trial. Not Guilty by Reasons of Insanity means that even though the defendant has been shown to have committed a crime, they are not held responsible due to their mental illness.

## CONFIDENTIALITY

Confidentiality is crucial. Disclosure of patient health information (PHI) is unethical except in medical emergencies and illegal without a release of information. PHI includes patient medical conditions, mental health conditions, names, charges, personal information like phone numbers, addresses, family information, and so forth. PHI should not be discussed with any other patients or outside parties. Staff should not repeat any information about a person's case or alleged offenses.

There are exceptions to releasing Private Health Information, however. Ethical reporting based on state requirements still applies. You have a duty to report child abuse and neglect. You have a duty to warn targets of homicide threats or ideation. Follow hospital policies on reporting in these cases. However, confidentiality is the rule.

## LEGAL ADVICE

All legal advice should come from their attorney. As a staff member you cannot offer any opinions or advice to a patient about their criminal case. If someone comes to you during a rehearsal and asks what they should do about their plea, you cannot provide advice. You should direct them to speak with their lawyer. If they talk about their charges and what happened leading up to being arrested, you cannot provide any opinion. "You shouldn't be in trouble for that," and, "I agree, you didn't do that," are opinions. Staff should never indicate verbally or in writing their thoughts about whether a patient is guilty or not guilty.

Judgements, advice, and opinions can deter a patient's treatment and progress. Part of the work is a willingness to set aside personal bias and treat all patients with dignity and respect, regardless of alleged crime. Please support patients with objective legal education and encourage them to utilize their attorneys for matters that directly pertain to their case. This is covered more in the Legal Education section of this guide.

## YOUR RESPONSIBILITIES

Research shows that those with increased professional or natural supports tend to have higher success rates and better mental health. Showing support and encouragement is crucial to rebuilding a rational mind and, ultimately, restore competency.

1. *Have at least a basic understanding of the legal education provided.*

Regardless of staffing position, you play a part in your patients' restoration services. You may not have a professional license, Have a basic understanding of legal education so you understand the big picture, can take opportunities to reinforce concepts, and can answer questions if a patient has them. Of course, refer to the legal educator for answers you don't know and the lawyer for questions specific to a patient's case.



2. *Know the main goals of competency restoration.*

A patient should know and understand:

- Their charges
- Court Players/roles (ex. Judge, Prosecutor, etc.)
- Who their lawyer is and why they are important
- The trial proceedings
- The possible consequences of a crime (verdicts and sentences)

A patient should know and be able to:

- Assist their attorney
- Maintain proper behavior in the courtroom

3. *Know your patient's learning style.*

Identify the patient's learning style and support one another in developing legal education games/activities that match this style. Engage the patient in the activities that match their learning style. This will be discussed in depth later in this guide.

## PATIENTS WITH JUSTICE INVOLVEMENT

Every patient that you will work with through this program has justice-involvement, meaning that they currently have an open criminal case through the courts. Being “justice-involved” can mean a lot of things however the impact of being justice-involved is largely variable and individualized and it’s important to keep in mind the experiences your patients have because of their involvement in the justice system.

### JUSTICE INVOLVEMENT AND SEVERE MENTAL ILLNESS

If you google “mentally ill in jail,” you will find article after article, study after study showing that there is an over-representation of those with mental illness in jails, meaning that the ratio of people with mental illness in jail is higher than the ratio of people with mental illness in general. Regardless of the reason why this is, (and it’s not a simple answer), it’s important to know and understand that those with mental illness, especially severe mental illness, do not and will not have their needs fully met while incarcerated.

Being charged with a crime is a stressful life-event that even the most mentally healthy individuals are negatively affected by so it’s not difficult to understand that justice-involvement has a tremendous effect on those who have either undertreated or untreated severe mental illness.

By the time your patient reaches you, they have likely spent a substantial amount of time in jail, sometimes in isolation, with no structure, no medication, no therapy, and are surrounded by others who are also struggling with incarceration while having an untreated mental illness.

All of this needs to be remembered when working with your patients, as it may take time for them to adjust to the stark contrast that a therapeutic setting brings from their jail experiences.

## LEGAL EDUCATION

### PURPOSE

In order to be found competent, a defendant must understand what is going on in the courtroom and with their criminal case. In order to assist them with this, you will be facilitating legal education sessions (either in groups or individually). Don’t worry, it’s not as scary or as complicated as it sounds. In fact, in order to be successful facilitating these sessions, you will have to find ways to make it fun and creativity is encouraged!

### STYLES AND METHODS OF TEACHING

As patients are admitted, you’ll notice that there is a significant range of education and knowledge amongst them. You’ll find that some patients just simply do better working one on one with a staff member. Just as we should meet patients where they are at with their therapeutic

needs, we also need to meet them where they are at when helping them with their legal education.

Ask any teacher *how* they teach, and you'll receive a lot of different answers and that's because there are so many ways to teach! The most important thing is to figure out how the patient best *learns*.

One way that you could learn about a patient's learning style is simply to observe. Sometimes it's obvious when a patient prefers to read on their own and then discuss or if they want to read out loud. Some prefer to be up and active while learning and some best learn by seeing an example.

For the times when it's not easy to determine, however over time and collaboration with the treatment team you will learn what you need to know.

One popular learning style theory is called VARK:

V-visual, (seeing and watching)

A-auditory, (hearing and listening)

R-reading, (books, papers, handouts)

K-Kinesthetic (doing, interacting, playing)

VARK was developed by Neil Fleming in 1987 to help both teachers and students understand how students learn best. (Flemming, 1987) In a group setting, the most effective way to teach involves activities that appeal to multiple learning styles. This is where creativity comes in! Use all your resources- music, movie clips, poems, and role-playing are all ways to teach without making the patients sit the entire time.

## LEGAL EDUCATION VS. LEGAL ADVICE

When providing legal education, it is important to understand the difference between educating and giving advice. It can be harmful to patients when the lines between educating and giving advice are blurred. As hospital staff, you must remain neutral and impartial.

***Legal education*** explains the law and the legal system in general terms. The information is not tailored to a specific case.

***Legal advice*** applies the law, including statute and case law and legal principles to a particular situation. It provides recommendations about what course of action would best suit the facts of the case and what the person wants to achieve.

Here are some examples of both:

<b><u>Legal Education</u></b>	<b><u>Legal Advice</u></b>
In criminal courts, you can have either a bench trial or a jury trial	In your case, you should choose a bench trial.
You have the choice of pleading guilty or not guilty.	If I were you, I'd just plead guilty and get it over with.
In a trial, there may be witnesses that testify.	You need to find witnesses to help your case.
There may be character witnesses in a court hearing.	You should find as many people as you can to be your character witness. That's what I'd do.
The charges that you have can either be misdemeanors or felonies.	Ask your attorney about why this is a felony; this should be a misdemeanor.
You have the right to either testify or not testify in your trial.	If you don't testify, you look guiltier than if you testify.

It is likely that patients will want to ask you about their specific case. You will need to remain neutral, and your answer should be educational.

<b><u>Questions</u></b>	<b><u>Your Response</u></b>
Do you think I should take a plea?	I think that is a very good question to ask your attorney. Do you have their number so you can call them?
What would you do if you were me?	It's tough to say but the only advice I can give to you is to speak with your attorney. They will know how to help you.
How much time do you think I'll do for this?	The range of penalties for the charge that you have is... however, it is best to speak with your attorney about this.
Do you think I'll do any jail time?	I know that you are anxious about the outcome of your case. Would you like to role play a discussion with your attorney, so you feel comfortable when asking them? I can't give you any answers, but we can certainly practice so you can feel comfortable speaking with your attorney.
I feel like everyone is against me; who should I trust?	I can understand why you may feel frustrated. It's important to share that with your attorney so they can help you. Your attorney must keep what you discuss with them confidential so you should consider being open and honest with them. We can role play if you think that would help?
My attorney did not help me at all when I had court; what should I do?	

## USING THE SKILLS TRAINING WORKBOOK

The Skills Training Workbook provided for your patients is to be used as a guide and resource when you facilitate Legal Education sessions. The topics covered and the worksheets given are there for you to use as you facilitate, and they are a tool to help the patients retain the information that is being given to them. However, you do not need to, nor should you, use only this workbook. As discussed in prior sections, it is important to embrace a variety of different ways to teach to make sure that you are giving all your patients the best opportunity for restoration possible.

Lastly, thank you. Your willingness, energy, and effort to help these patients restore their competency may seem like a small chapter in their journey but it matters. By helping your patients learn and understand the justice system and important aspects of their case, you are empowering them to advocate for themselves which, frequently, is not an experience a lot of patients have.

Add Seal/Signature of the ISPHN

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