

Competency to Stand Trial Evaluations: Use of State Hospitals, Community-Based, and Jail-Based Approaches

NRI's 2020-2021 State Profiles

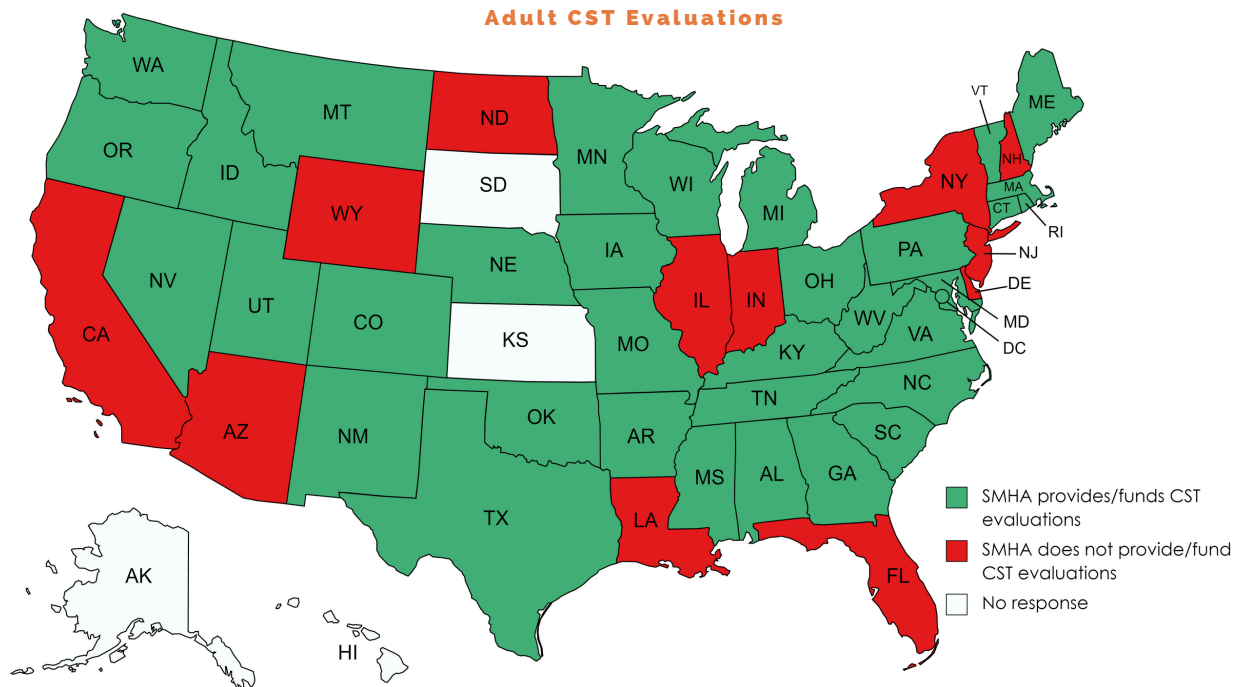
October 2021

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.

To ensure fairness for the accused and the integrity of the justice system, the United States legal system recognizes that criminal defendants must be competent to stand trial (CST) before proceeding with the legal process.¹ The State Mental Health Agency (SMHA) in 35 states directly provides or funds CST evaluations for adult criminal cases. In the 25 SMHAs that were able to provide data, an estimated 29,768 CST evaluations are conducted annually.

Thirty states have a statutory or court mandated timeline for completing adult CST evaluations. The average number of days required to complete these CST evaluations across 28 states is 50 days (median of 30 days), ranging from a low of three days in Idaho to a high of 180 days in Nevada.



Location of CST Evaluations

CST evaluations for adult criminal cases are conducted in a variety of settings. A majority of CST evaluations conducted by (or on contract with) the SMHA for adults were completed on an outpatient basis in jails (39%) and community-based settings (31%). Twenty percent of CST evaluations were completed on an inpatient basis, whereas nine percent were completed on an outpatient basis by other providers such as court-funded private defense experts.

¹Wall, Barry. Assessing Competency to Stand Trial. (October 30, 2020). *Psychiatric Times*, Volume 37, Issue 10.

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SMHAs provide or fund CST evaluations for adult criminal cases

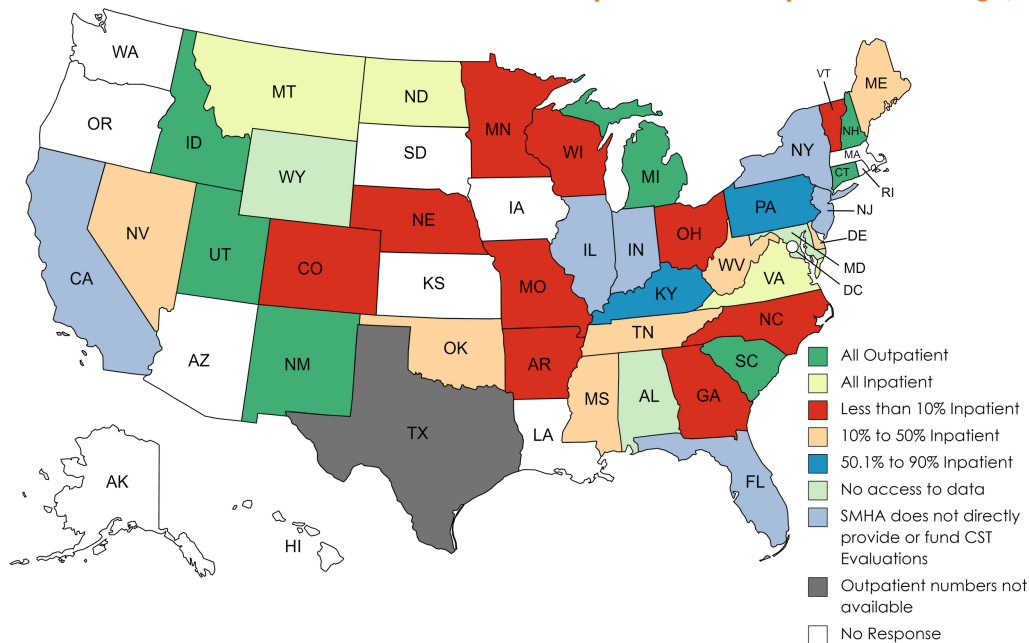
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SMHAs have continuous quality improvement process for forensic evaluators

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In 2019, all CST evaluations conducted by (or on contract with) the SMHA were conducted in outpatient settings in seven states, whereas in four states all such evaluations were conducted in inpatient settings. In 10 additional states, less than 10% of CST evaluations conducted by (or on contract with) the SMHA were conducted in inpatient settings.

Percent of CST Evaluations Conducted in Inpatient or Outpatient Settings, 2019



Training for CST Evaluators

There are state mandated forensic evaluation training requirements for CST evaluators for adult criminal cases in 24 states. In addition to attending trainings, in 12 states there is a state mandated certification requirements with performance review. In 26 states, there is a continuous quality improvement process for forensic evaluators; for example:

- In Minnesota, in addition to regular supervisory reviews, peer reviews are completed double blind with feedback loops every six months.
- In Oregon, CST evaluator certification requires submission of a redacted report for review and feedback.
- In South Carolina, supervisors screen all evaluations with annual review of evaluation performance. In addition, there are quarterly peer review meetings to review evaluation reports.
- In Virginia, there is a Forensic Oversight Program run by the Department of Behavioral Health and Developmental Services (DBHDS) Office of Forensic Services. The Commissioner maintains a list of approved evaluators who have requisite education, training, and experience. All approved evaluators are required to send in redacted versions of their CST and sanity evaluations for peer review. The Commissioner has authority to remove individuals from the approved list of evaluators.

In 28 states, there are issues with the quality or consistency of evaluations done by providers working independently. For example:

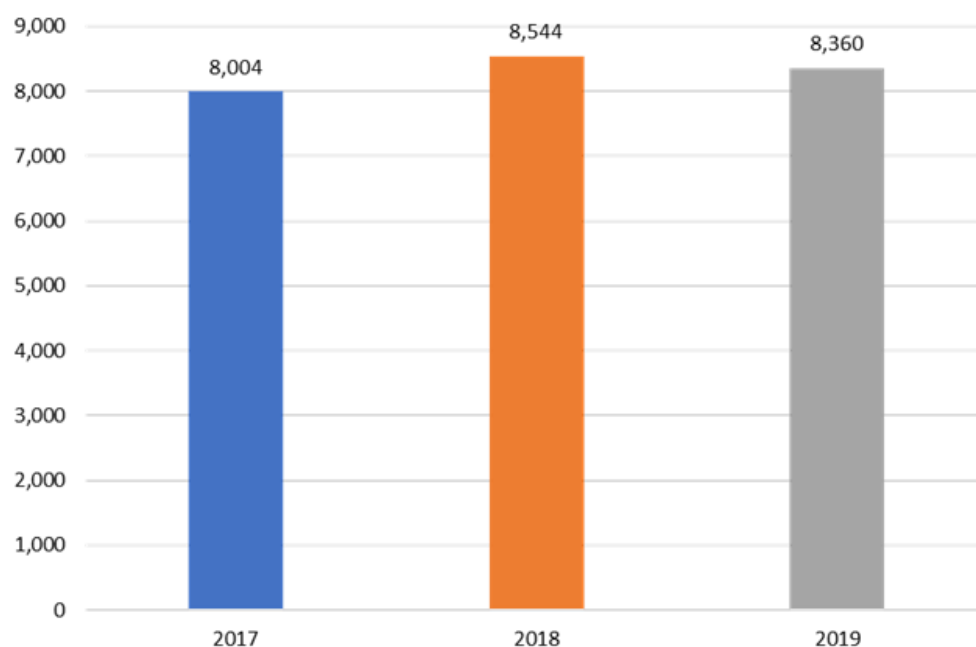
- In Arkansas, the quality of contracted outside evaluators is generally lower.
- In Delaware, some evaluators have a better understanding than others of the legal standards governing determinations of incompetency. In addition, different evaluators (in the opinions they offer) appear to set the bar required for competency at different levels and because not all evaluators receive specialized training in performing CST evaluations, there is a wide discrepancy in the opinions provided.
- In South Carolina, there is a great variability in terms of report quality and approach to the psycho-legal question of CST for second opinion evaluations completed by independent contractors who are not affiliated with the SMHA.

Inpatient CST Evaluations

In 30 states, courts can require an adult defendant to be admitted for an inpatient evaluation even if the SMHA prefers an outpatient evaluation. However, in at least 10 states (Arkansas, Delaware, Iowa, Minnesota, Nebraska, Nevada, Oklahoma, Pennsylvania, South Carolina, and Vermont), this occurs infrequently. Eight SMHAs that conduct inpatient pre-trial evaluations have the discretion to discharge an evaluatee as soon as the defendant is opined competent to stand trial.

Twelve states have a timeline for admitting adult defendants for a CST inpatient evaluation. In seven of these states, defendants must be admitted within an average of 12 days (median of 7 days), ranging from a low of 1 day in Nevada to a high of 30 days in Alabama. The estimated average length of stay—prior to adjudication of competency—for adults evaluated for trial competency on an inpatient basis is 61 days across 22 states, ranging from a low of 3 days in Oklahoma to a high of 211 days in Montana. In 2019, 23 SMHAs conducted 8,360 inpatient CST evaluations—an average of 363 evaluations per state (median of 106 days)—ranging from a low of 8 evaluations in Missouri to a high of 2,660 in Texas.

Number of Adult Inpatient CST Evaluations Conducted, 2017-2019 (22 States Reporting)

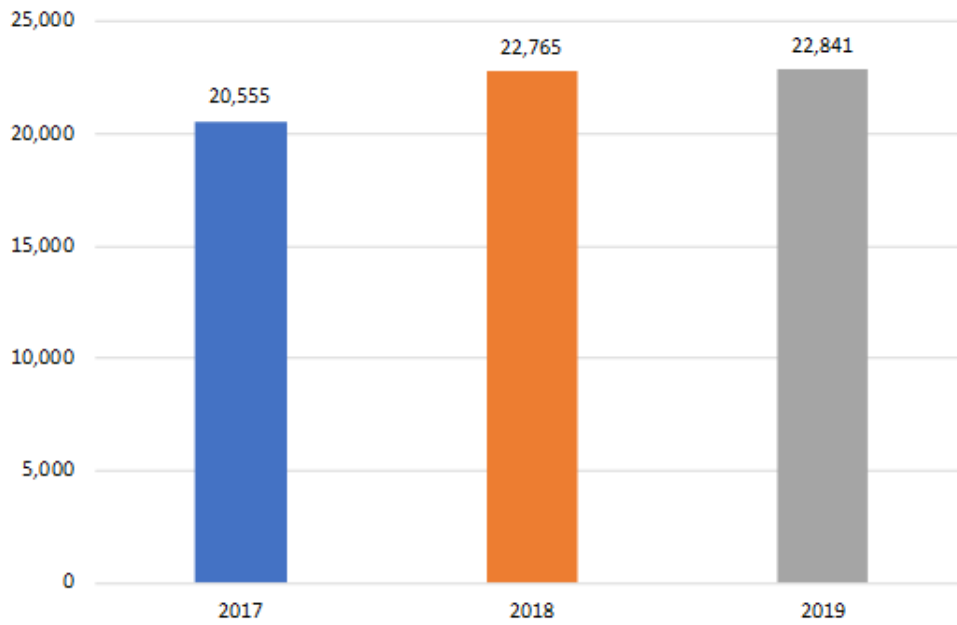


Outpatient CST Evaluations

At least 20 states are promoting the increased use of outpatient adult CST evaluations. For example, the SMHA in Kentucky makes designated outpatient evaluators readily available throughout the state for rapid community and jail-based evaluations; in Michigan, outpatient CST evaluations have been standard for years, with some happening in their local region and most being conducted through a centralized evaluation center; in Minnesota, the SMHA offers education to courts about services offered in the community, diverting evaluations to outpatient whenever possible; and in Mississippi, the SMHA provides no cost evaluation training to community-based psychiatrists and psychologists. The average cost of providing an adult CST evaluation across 12 states is \$1,232 (median of \$986), ranging from a low of \$100 in North Carolina to a high of \$3,500 in North Dakota.

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Number of Adult Outpatient CST Evaluations Conducted, 2017-2019 (24 States) Reporting



**For additional information about this Report, or the State Profiles Project,
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National Association of State Mental Health Program Directors Research Institute (NRI)