

# Alternatives to Inpatient Competency Restoration Programs:

## Jail-Based Competency Restoration Programs

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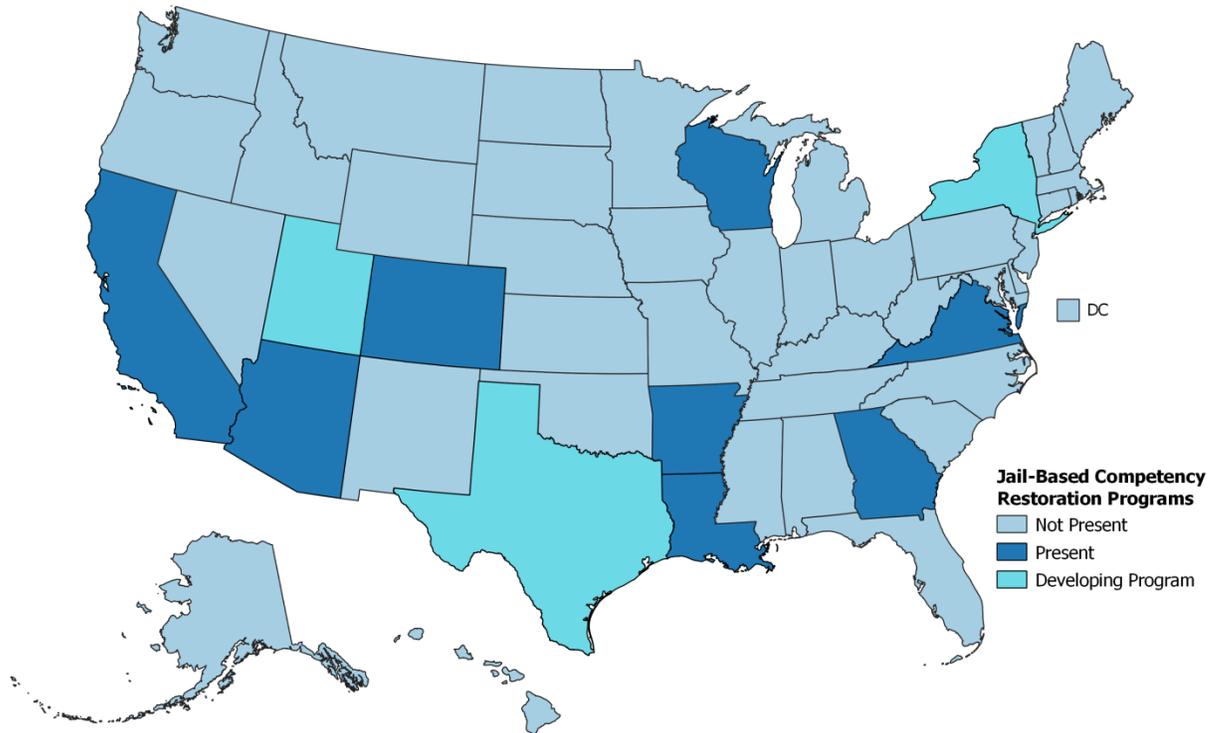
Jail-based competency restoration (JBCR) programs are relatively new. This paper describes the different types of JBCR models that have been developed, the states that have implemented them, and their effectiveness.

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Jail based competency restoration (JBCR) programs are relatively new.<sup>1</sup> Very few states have implemented jail-based competency restoration programs.<sup>1,2,3,4,5</sup> These programs reflect an area of development that must take into account the nuances of jail mental health services. Even amongst the states that operate these programs, jail-based competency

restoration programs can have different admission eligibility criteria and may vary in how they operate.<sup>1,3-5</sup> According to Gowensmith, Frost, Speelman, & Therson (2016), as of 2016 nine states had jail-based competency restoration programs: Arizona, California, Colorado, Florida, Georgia, Louisiana, Tennessee, Texas, and Virginia.<sup>2</sup>

## Jail-Based Competency Restoration Programs



There are two types of JBCR programs. The first is a full scale JBCR program. In essence, this means that jails that have this program provide a complete competency restoration program. Defendants admitted to this type of JBCR program are held within the program until they regain competency to stand trial or are found to be unrestorable. Only under certain parameters (e.g. requiring more intensive services) are defendants transferred to an inpatient competency restoration program.<sup>3-4</sup>

The second type of JBCR program is used as a time limited method to provide defendants

with restoration services until they can be placed in an inpatient competency restoration program. This method is used to provide defendants with some competency restoration services while they await admission to a state psychiatric hospital's inpatient competency restoration program. In essence, this version attempts to reduce the number of defendants on the waitlist for inpatient competency restoration services by attempting to restore them prior to their admission to that inpatient program.<sup>6,7</sup>

## **Full Scale JBCR programs**

Jail-based restoration services can be provided in a variety of ways. In some instances, restoration services may be provided by independent contractors.<sup>8,9</sup> In other instances state psychiatric hospital workers may come to the jail to provide restoration services.<sup>10</sup> It all depends on the resources available within the county and/or state.<sup>8-10</sup>

Defendants typically receive full scale jail-based competency restoration services in a unit/area that is dedicated for that purpose.<sup>3</sup> Some jails may equip these units with housing pods for the IST patients who are receiving competency restoration services.<sup>11</sup> Other jails may not have the resources available to house IST. Instead, a unit/area is equipped to provide competency restoration services only. This means, when they are not receiving competency restoration services, that the IST defendants residing in these jails spend most of their time in the general jail population.<sup>12</sup> In essence, how services are provided within the JBCR appears to vary based on the resources available to the jail and on the contractual arrangements with jail providers or outside entities that come into the jail to provide restoration services.<sup>3,12</sup>

### **Arizona**

Arizona has several jail-based restoration programs. One was developed in 2007 in Pima

County, Arizona.<sup>12</sup> Pima County's program uses a dedicated unit/area for IST defendants. IST defendants in need of restoration services can be housed within the general inmate population or within the mental health treatment pods/units.<sup>12</sup> Pima County's JBCR program has a psychiatrist who provides treatment services to defendants. The time that the psychiatrist has to treat patients is limited (about 12 hours per week). Restoration specific services are typically provided by social workers.<sup>12</sup> A report from 2011 indicated that since the program started, the program had successfully restored 79% of its defendants<sup>i</sup> and that, for the defendants who are restored, the average time to restoration is four months.<sup>12</sup>

In 2010 Yavapai County' developed its own JBCR program. The program is located within the county's Detention Center. The program provides restoration services for ten counties within the state, as well as "a Native American Nation".<sup>8</sup> The Yavapai jail-based restoration program employs a team of members that provide IST defendants with restoration services. The psychologist sees the IST defendants once per week using telepsychology. Three counselors are involved in providing in-person restoration-related therapy (individuals and/or group) sessions at the jail. If necessary, a defendant can be referred to the medical director

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<sup>i</sup> Note: Data on the number of admission between 2007 and 2010/2011 was not provided in the report.

of the program for evaluation.<sup>13</sup> All members on the restoration team participate in a weekly conference call in order to stay informed on each defendant's progress and/or needs.<sup>13</sup> Data collected between 2011 and 2014 indicates that out of the 187 defendants admitted to the program, the program has restored 86.7% of defendants. The remaining 13.3% of defendants were found to be unrestorable.<sup>13</sup>

### **California**

California has developed several jail based restoration programs. The first JBCR program piloted in California was implemented in San Bernardino in 2011.<sup>9,14-15</sup> San Bernardino's JBCR program utilizes a private provider (Liberty Healthcare) for the provision of restoration services.<sup>9,14-15</sup> Liberty has 70 days to restore a defendant; if the defendant is not restored within that period of time he/she is sent to a state psychiatric hospital for inpatient level restoration services.<sup>9,15</sup>

The Riverside JBCR program was developed in 2013. Defendants accepted into the program must be referred by Riverside County's Sheriff Department. Restoration services are provided by an independent contractor (Liberty). Furthermore, while the jail has dedicated 20 of its mental health unit's beds to the JBCR program, IST defendants may be housed in the general population.<sup>16</sup>

The Sonoma County JBCR program was developed in 2017. Restoration services are provided to IST patients at Sonoma's Adult Detention Facility. The program contracts its services out to California Forensic Medical Group, Inc. Currently, the program is able to accommodate up to 12 defendants at a time. This has resulted in a waitlist for the program. In January of 2018 there were 35 defendants on the waitlist.<sup>17</sup>

These three JBCR programs are not the only operational JBCR programs in California but they are the only programs for which data is readily available to the public at this time. Very little information has been made publically available on the successfulness of these programs. This may be due to the fact that the programs, with the exception of San Bernardino, are relatively new so information is still being compiled on these programs. Several documents have reported that the San Bernardino JBCR program has a restoration rate between 45% and 54%.<sup>3,9,14</sup> Based on data from 2013, out of the 162 admissions that the program has had, 54% of the defendants have been restored. On average they have been restored within two months. The remaining 42% were transferred to one of California's state psychiatric hospitals for more intensive services.<sup>14</sup>

## **Other Jail-Based Alternatives to Inpatient Competency Restoration Being Developed**

California is looking to develop an Admission, Evaluation, and Stabilization Center.<sup>18</sup> The center is proposed in the 2017-2018 Governor's Budget.<sup>18</sup> It would provide competency restoration services within the jail in Kern County, California.<sup>18</sup> According to California's Legislative Analyst's Office (2017) the center would be used to screen IST inmates. Once the inmates are screened, the evaluators would determine whether or not they should be admitted to a state mental health facility for inpatient care.<sup>18</sup> If the evaluators decide that the inmate needs inpatient care he/she would be sent to the state mental health facility. On the other hand, if the evaluator determines that the defendant does not require that level of care the evaluator can admit the defendant to the center for competency restoration. The cost to operate the center would be higher than the amount needed to operate a jail-based competency restoration program since the center would need to be equipped to handle dangerous inmates (jails are already equipped to handle the security needs of these defendants).<sup>18</sup> Despite this drawback, the main benefit of the center would be its ability to divert defendants who do not need inpatient level of care from the state psychiatric hospitals. This could help California's state psychiatric hospitals reduce the number of beds being used to

accommodate IST defendants who no longer need inpatient level services. In turn, this could open up more beds for patients who require inpatient services. The center has just been established and, as result, limited data exists on the program and the defendants who it provides services to.

### **Colorado**

In 2013 Colorado created a jail-based restoration program, called RISE (Restoring Individual Safely and Effectively), within Arapahoe County's Detention Facility to assist with the influx of forensic patients being admitted to Colorado Mental Health Institute at Pueblo.<sup>19</sup> To be eligible to participate in this JBCR program, defendants must voluntarily take their medications, not have any serious medical conditions, and not be considered dangerous.<sup>1,19</sup>

Data collected on the program from 2013 through 2015 suggests that of the 106 patients who have been admitted to the program, 67% were restored. Out of the remaining 33%, it was reported that 18% were transferred to a state psychiatric hospital for more intensive services, less than 1% were released by the court, and 12% of defendants were still in the program.<sup>3,15,19</sup> Most of the defendants who were restored achieved restoration within three months.<sup>19</sup>

## **Georgia**

In 2011 Georgia developed its competency restoration program in Fulton County Jail.<sup>20,21</sup> The program has a whole unit/pod dedicated to competency restoration. In order to be admitted to the pod, a defendant must be male, found IST, not have a history of violent or aggressive behavior, not more than mildly to moderately intellectually impaired, and lack any serious medical conditions.<sup>21</sup> Information reported at a National Association of State Mental Health Program Directors conference indicated that of the 143 men admitted to the pod for competency restoration services, 34% have been restored, 12% have been found unrestorable, 19% were diverted<sup>ii</sup>, 25% were transferred to a state psychiatric hospital for more intensive services, and 10% were still enrolled in the program.<sup>20</sup> Information from the presentation also suggested that the JBCR program is designed to provide competency restoration to a small number of inmates (male and female) residing in the jail's general population. Out of the 174 (109 males, 65 females) inmates provided these services, 9% were restored, 2% (three inmates) were found unrestorable, 31% were diverted, 40% were transferred to a state

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<sup>ii</sup> The information presented via PowerPoint at the National Association of State Mental Health Program Directors conference indicated that diversion measures, such as Assertive Community Treatment, were utilized. Additional information was not provided in the text of the PowerPoint that elaborated on how this process worked.

psychiatric hospital, and 18% were still being provided competency restoration services.<sup>20</sup> Based on the information collected on these inmates, the length of time for all of the defendants who were restored (those in the general population and in the dedicated pod), the average time until restoration was four months.<sup>20</sup>

## **Louisiana**

Louisiana has a jail-based competency restoration program. Little information is available on when the program was developed. Reports suggest that the program was in operation prior to 2010.<sup>22</sup> The program is for individuals found to be incompetent to stand trial who have been ordered to receive competency restoration services within a jail setting for 90 days.<sup>23</sup> Data from the program suggests that less than 33% of defendants have been restored within this time frame. The remaining 67% were transferred to an inpatient restoration program since they were not been restored within 90 days.<sup>23</sup>

## **New York**

New York is examining the possibility of developing a JBCR program. According to New York's 2019 Executive Budget, the Office of Mental Health is going to work with New York's counties to develop JBCR programs within their facilities.<sup>24</sup>

## Utah

Utah recently spent \$3,300,000 on the development of Utah's first full-scale JBCR program.<sup>25</sup> The program is still being established. As a result, limited data is publically available on the program.

## Texas

Texas is looking to implement a full-scale jail-based competency restoration program. Currently, one does not exist since there have been delays in establishing the program.<sup>3</sup>  
<sup>26,27,28,29</sup> Texas' Health and Human Services Commission is having difficulty finding mental health and/or behavioral health personnel able to provide services within a jail setting.<sup>3</sup>

## Virginia

In 1997 the first JBCR program was piloted at Riverside Regional Jail in Prince George County, Virginia.<sup>11</sup> A unit within the jail was renovated into a psychiatric unit that could house and treat inmates. The unit that was renovated originally was comprised of 48 cells. Thirty-eight of the cells were transformed into rooms for the psychiatric unit's patients. The remaining 10 cells were transformed into offices for the mental health providers. The area was also renovated to have several individual group therapy rooms, several stabilization rooms, and a large space/room for group activities and/or therapy sessions.<sup>11</sup>

While the psychiatric unit was not developed to solely treat inmates found incompetent to stand, the unit does provide competency restoration services to these defendants.<sup>11</sup> In order to provide treatment and restoration services, a contract was established with an independent provider (Liberty Healthcare). In regards to funding, the Riverside Regional jail was responsible for providing defendants with basic provisions (e.g. food, housing, laundry). The ROC program, however, was responsible for providing medical services and medication to the JBCR patients.<sup>3,11</sup>  
30,31

Data from 1997 through 2002 indicated that the program was able to restore 83% of its participants<sup>iii</sup>. The average time that it took to restore a defendant was 77 days.<sup>11</sup> While this information is over 17 years old, there seems to be very few publically available documents with more recent information on the effectiveness of the program.

## **Time Limited Restoration Services via JBCR Programs**

The other method of providing jail-based competency restoration services involves the provision of competency restoration services within the jail setting for a short period of time. Gowensmith, Murrie, & Packer (2014) refer to it as the "stop-gap" version (p. 31). For the purpose

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<sup>iii</sup> The total number of IST defendants served between 1998 and 2002 was not reported (Jennings, & Bell, 2012).

of this review, we refer to them as time limited restoration services. These JBCR programs are designed to provide restoration services for defendants awaiting admission to a state mental health facility.<sup>3-7,9,14,23</sup> Defendants participating in these time limited JBCR programs may be restored while awaiting admission to a state psychiatric hospital. The restoration of defendants awaiting admission reduces the number of defendants who are on the waitlist to be transferred to a state psychiatric hospital for inpatient competency restoration services when a bed becomes available.

### **Texas**

According to data from Graziani, Guzmán, Mahometa, and Schafer, (2015) a JBCR program was developed in 2012 that served Lubbock, Crosby, Hockley, and Lynn County. Services were provided by Starcare Specialty Health System.<sup>3 32</sup> The program is not a full scale JBCR program. Starcare Specialty Health System provides defendants awaiting admission to a state psychiatric hospital (or in some instances an outpatient community-based program) with competency restoration services and/or medication until a bed becomes available.<sup>3,32</sup> According to Graziani, Guzmán, Mahometa, and Schafer, (2015) Starcare Specialty Health System is no longer providing JBCR services.<sup>32</sup> There appears to be little information available to the

public on the current status of this JBCR program.

### **Utah**

Utah developed a program in July 2014 where staff from Utah State Hospital go to county jails and provide services to IST defendants awaiting admission to Utah's state psychiatric hospital competency restoration service. In 2015 the program was transformed into what is now known as Utah's Outreach Program.<sup>33,34,35</sup> The program is still (relatively) new. As a result, limited data exists on the program's effectiveness.

### **Wisconsin**

In 2016 Wisconsin developed a jail-based competency restoration program.<sup>6-7</sup> The purpose of this program is to provide treatment to defendants who had been court ordered to receive treatment in a state mental health facility but were awaiting admission into the facility. As of 2016, five counties were piloting this new program.<sup>6-7</sup> Information on the effectiveness of the program does not appear to be publically available at this time.

## **Unspecified JBCR Programs**

### **Arkansas**

Arkansas has a Forensic Outpatient Restoration Program which provides competency restoration services in both jail-based and

community-based settings. Arkansas refers to both its community- and jail based competency restoration programs as part of its over-arching Forensic Outpatient Restoration Program.<sup>10,36</sup> This paper is focusing solely on the *jail-based* portion of this program<sup>iv</sup>. Limited data has been made publically available on this portion of the Forensic Outpatient Restoration Program. The information that has been provided indicates that these services are provided to IST defendants who cannot be released on bond<sup>v</sup> who are housed within Arkansas' county jails.<sup>10,36</sup>

### **Advantages and Disadvantages to JBCR Programs**

The results above indicate that JBCR programs have been established and results are still unfolding. Some programs report successes, while others are awaiting further development or data collection. Jail-based restoration programs are successful at keeping IST defendants who do not need hospital level care yet cannot be released into the community from being sent to state psychiatric hospitals for inpatient competency restoration services. Using JBCR programs can reduce the amount that states spend on IST defendants. The amount that states report to save can differ. It can be difficult to compare

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<sup>iv</sup> Please refer to the "Outpatient Competency Restoration Paper" for more details on the community-based services provided in Arkansas.

<sup>v</sup> Those released on bond receive community based competency restoration services (see the Outpatient Competency Restoration Paper for more details).

the amounts that states save with their JBCR programs. Access to resources varies for each state. This, in turn, may impact what factors are included in the cost calculations (e.g. housing, food, laundry).<sup>4,9,11-12,14,21,25</sup> Data from the San Bernardino program in California suggests that the program represents a cost-savings to the state. The program costs the Department of Mental Health just under \$300 per day per defendant.<sup>9,15</sup> The Department of Mental Health pays the independent contractor (Liberty Healthcare) this much per defendant per day for the provision of services. Liberty uses the money for treatment and restoration services, as well as to pay the county for housing, meals, and clothing for the JBCR participants. Therefore, while the county incurs cost because these individuals are remaining under their jurisdiction (and not being transferred to one of California's state psychiatric hospitals unless inpatient care is required), the money given to the county by Liberty Healthcare offsets their expenses.<sup>9,15</sup> A Legislative Analyst Office document written by Taylor (2012) reported that in the first 9 months that the JBCR program was operational that San Bernardino County saved approximately \$200,000 and the state saved \$1.2 million.<sup>9,15</sup> While this is just one JBCR program, it does suggest that JBCR programs can be cost-effective.

Despite potential advantages of jail-based competency restoration programs, there are also

drawbacks. To begin with, not all jails are equipped to provide the appropriate level of mental health care to defendants found incompetent to stand trial.<sup>1,3-4,26-27-29</sup> Staffing can also be problematic for jail-based competency restoration programs. In order to implement a jail-based competency restoration program, the jail needs to have an adequate number of licensed mental health professionals continuously available. Not all jails have the means to meet these needs.<sup>4,26-27-29</sup>

One major critique of these programs is that they keep defendants in a non-therapeutic setting for a longer period of time.<sup>3-4,27</sup> Instead of patients being sent to a mental health facility or to a community based restoration program, they are being kept in a highly restrictive correctional environment. This has led to some researchers and academics raising the concern about the civil liberties of defendants.<sup>3</sup> It should be noted that defendants who are incompetent to stand trial require restoration services. While a finding of incompetence to stand trial can be related to an individual's mental health, it is not a measure of need for mental health care.<sup>37,38</sup> Competency restoration services may not address all of the defendant's psychiatric needs (just the ones related to his/her inability to understand the court proceedings or consult with his/her attorney).<sup>37-38</sup> Ultimately, jails cannot always provide the level of services that defendants with mental health

disorders require, regardless of their competency status. This is problematic when defendants require a different level of care than what is provided in the jail setting, especially when they remain in the jail setting for extended periods of time.<sup>3-4,27</sup>

## **Data Limitations**

As can be seen from the information provided in this paper, JBCR programs can vary substantially from one another. There structural differences (full-scale JBCR versus time limited JBCR, mental health services provider, participant housing, etc.), as well as the differences in their participant population (number of patients served, eligibility criteria, etc.) increase the complexity of making comparisons on the effectiveness of these programs between (and within) states.<sup>3-4,8-9,11-12,14-15,19,21,23,25</sup> This issue is even more predominant when trying to compare the effectiveness of JBCR programs to inpatient competency restoration programs.

## **Conclusion**

The benefits and limitations of JBCR programs need to be considered when states are deciding whether or not to implement them. As can be seen from the information provided in this paper, there has been limited information published on the effectiveness of JBCR programs.<sup>3</sup> Some researchers suggest that JBCR

programs should only be implemented in instances where a state/county is unable to develop outpatient community-based competency restoration programs.<sup>3,27</sup>

Jail-based competency restoration programs represent one model for delivering competency restoration services. Many questions surround the use of JBCR programs.<sup>3-4</sup> The American Bar Association has developed guidelines around when different types of competency restoration services should be used. It recommends that the use of JBCR programs be limited to defendants who do not require inpatient level of care but are unable (e.g. dangerousness, offense type) to be released into the community pursuant to a judicial order. When outpatient community-based competency restoration services are available, these services should be used for defendants who are able to be released into the community and who do not require inpatient care. The guidelines recommend that inpatient competency restoration services be reserved for individuals who need hospital level care, who do not have access to JBCR or outpatient community-based competency restoration services, or for defendants who refuse the other services that are available to them.<sup>37</sup> In the end, the use and development of JBCR programs should be considered in relation to other treatment services that are available and in regards to how confinement will impact the

health of the defendants eligible for JBCR services.

The proliferation of JBCR programs in response to what appears to be increased demand for competence restoration services resulted in a variety of different JBCR models being developed. Limited data has been made available to the public on the effectiveness of these programs. Even when information has been made publically available, comparing the effectiveness of different JBCR programs is difficult due to the uniqueness of each JBCR program.<sup>3-4,8-9,11-12,14-15,19,21,23,25</sup> Additional research needs to be conducted on these programs to assess their effectiveness and to determine how these programs can be adapted, based on the resources available within a community, while ensuring that the rights of the defendants enrolled in the program are protected.

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