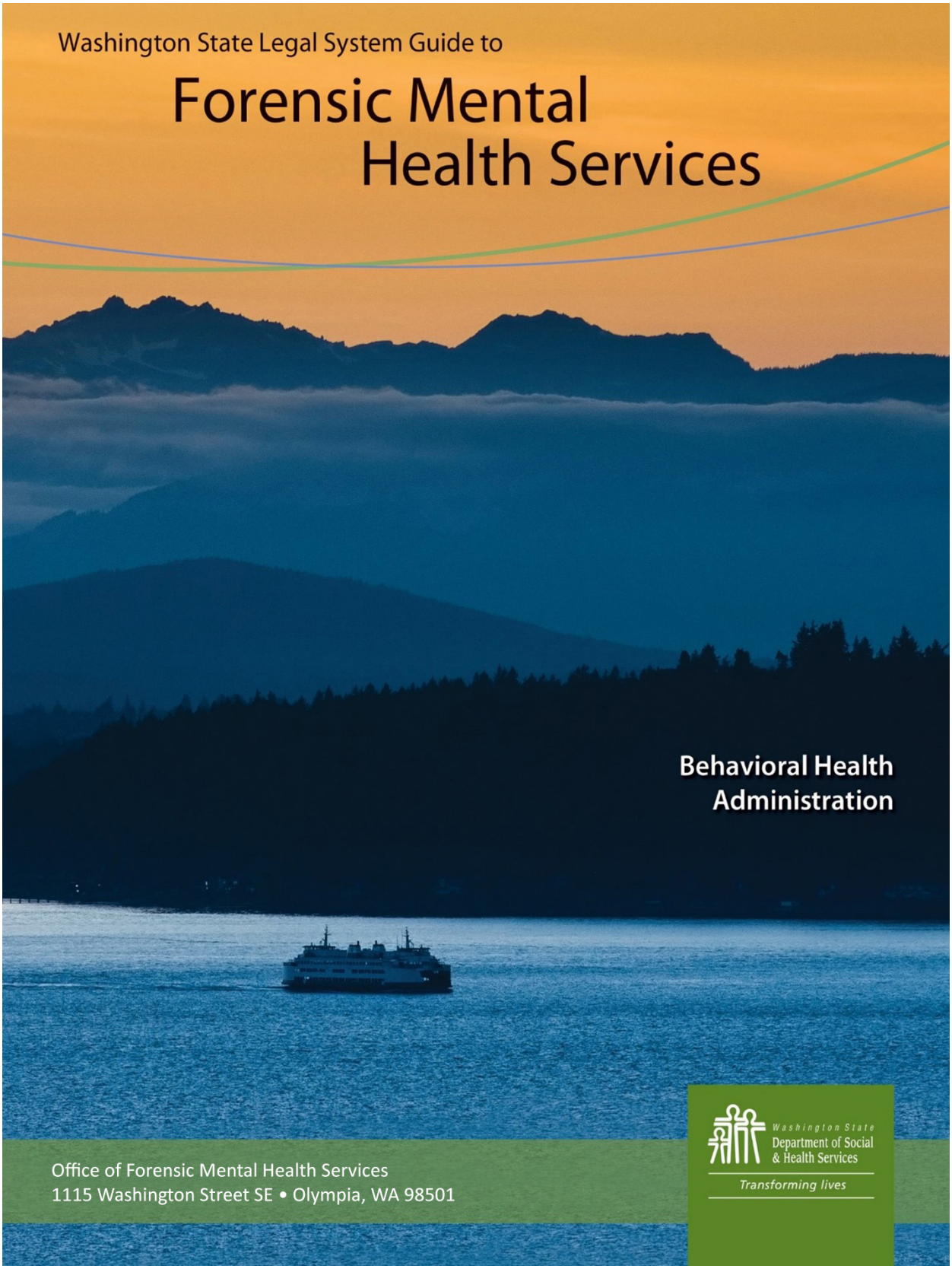
Washington State Legal System Guide to

Forensic Mental Health Services



Behavioral Health Administration

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Washington State Department of Social & Health Services

Transforming lives

Acknowledgments

The preparation of this guidebook involved the contributions of many people including the Office of Forensic Mental Health Services staff, our community partners, Office of the Attorney General, and the Chief Medical Officer, Department of Social and Health Services. This version was updated 12/8/2021.

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INTRODUCTION

Each day in our state and in the nation, many people living with mental illness come into contact with the criminal court system. It is important for courts, attorneys, law enforcement, correctional facilities, administrators and other community partners to understand what services are available to divert, evaluate or treat individuals in the criminal court system with psychiatric illness. Navigating these services and the processes that are required can seem daunting. The goal of this guidebook is to provide need-to-know information and practical direction to interested parties about forensic mental health services for adults in Washington. This guidebook is for informational purposes only and it is not intended for legal or clinical decision making nor is it a legally binding policy document.

This guidebook will cover the following areas: an overview of the forensic mental health system; background on mental and behavioral health conditions germane to the forensic mental health system; a need-to-know overview of competency evaluation and restoration processes; the civil commitment process including when a defendant's charges are dismissed and a civil commitment is pursued; and finally, an overview of diversion options. This guidebook does not cover specific behavioral health services for violent sex offenders, juveniles, or services in correctional settings. A list of additional resources and contact information is provided.

We appreciate your partnership and assistance to improve services to clients served by our forensic mental health system. We look forward to working with you.

Behavioral Health Administration

Office of Forensic Mental Health Services

1. DEPARTMENT OF SOCIAL AND HEALTH SERVICES

The Department of Social and Health Services is Washington's largest state agency. In any given month, DSHS provides some type of shelter, care, protection and/or support to 2.4 million of our state's 7.1 million people.

Our goal and commitment is to be a national leader in every aspect of client service. Our agency's five priorities consist of preparing for aging Washingtonians; supporting people in our care and custody; serving people in their home community; and increasing organizational efficiency, performance and effectiveness.

1.1 Behavioral Health Administration

The Behavioral Health Administration transforms lives by supporting sustainable recovery, independence and wellness. We do this through funding and supporting effective prevention and intervention services for youth and families, and treatment and recovery support for youth and adults with addiction and mental health conditions (also known as behavioral health). It operates three state psychiatric hospitals: Eastern State Hospital, located in Medical Lake; Western State Hospital and the Child Study and Treatment Center, located in Lakewood; the Special Commitment Center located on McNeil Island; and oversees the Office of Forensic Mental Health Services. Additionally, BHA operates two residential treatment facilities that deliver high-quality competency restoration services. They are located in Steilacoom and Centralia, respectively. The Northern Regional Office in Seattle (as well as outstations located in several counties) provides forensic evaluation services.

1.2 Office of Forensic Mental Health Services

The Office of Forensic Mental Health Services with headquarters in Olympia is responsible for the leadership and management of the department's adult forensic mental health care system. OFMHS provides forensic evaluations, competency restoration, not guilty by reason of insanity treatment services, and liaison services to effectively coordinate efforts with system partners to meet shared goals.

OFMHS also provides ongoing training and technical assistance to improve quality and timeliness of forensic mental health services, data management and resource allocation, training and certification of evaluators, and quality monitoring and reporting.

OFMHS works in collaboration with community partners implement robust diversion efforts to prevent individuals with mental illness from entering the criminal court system.

1.3 State Hospitals

1.3.1 Eastern State Hospital (ESH) — is a 337-bed inpatient psychiatric hospital accredited by the Joint Commission and certified by the Centers for Medicare and Medicaid Services. ESH is located in Medical Lake, approximately 20 miles west of Spokane. ESH is one of two state-owned psychiatric hospitals for adults Washington and provides services to people in 20 eastern Washington counties. ESH provides evaluation and inpatient treatment for people with serious or long-term mental illness who have been referred to the hospital through the behavioral health organizations/managed care organizations when they have received a civil court order for involuntary treatment (see RCW 71.05) or through the criminal court system when they have received a forensic court order for involuntary treatment- (see RCW 10.77).

The **Forensic Services Unit** —is a 175 bed inpatient unit for patients who enter the forensic (legal) unit at ESH through the criminal court system. Evaluation and treatment services are provided for adults prior to their trial, after they are convicted, or after they are acquitted by reason of insanity.

1.3.2 Western State Hospital — is located in Lakewood and is one of the largest psychiatric hospitals west of the Mississippi with more than 800 beds and 2,700 employees. WSH provides evaluation and inpatient treatment services for people with serious or long-term mental illness in 20 western Washington counties. Patients are referred to the hospital through a behavioral health organization/managed care organization when they meet the criteria for involuntary treatment through the civil system (see RCW 71.05) or through the criminal court system (see RCW 10.77).

The **Gage Center of Forensic Excellence** — is located on the WSH campus and serves clients who have been committed to the hospital under criminal proceedings (RCW 10.77). These clients include defendants undergoing inpatient evaluation for competency to stand trial and/or mental state at the time of the criminal offense, as well as clients who have been found Not Guilty by Reason of Insanity. The Center of Forensic Excellence contains five treatment units that primarily house patients undergoing forensic evaluation/competency restoration and six treatment units that house NGRI patients. There are presently 424 beds allocated to forensic patients.

1.3.3 Residential Treatment Facilities — in 2016, DSHS collaborated with Correct Care Recovery Solutions and Wellpath Recovery Solutions to establish two new residential treatment facilities that provide inpatient competency restoration services for adults. The Maple Lane Competency Restoration Program is a 30-bed facility operated out of the Cascade Cottage on the former Maple Lane School campus in Centralia. The Yakima Competency Restoration Program was a 24-bed facility in Yakima. This facility closed effective July 31, 2021. These RTFs are described in more detail in Section 4.2 of the guidebook. In 2019, Fore Steilacoom Competency Restoration Program opened on WSH grounds offering 30 beds and managed by BHA.

1.3.4 The Child Study and Treatment Center — is located on the WSH campus and is the only state-operated and funded psychiatric hospital for children and youth (ages 5 to 17). Accredited by The Joint Commission, CSTC is a secure campus designed for youth who cannot be served safely in less restrictive community settings. The average length of stay is 10 months to one year. CSTC has a total capacity of 65 beds divided among three age- and developmentally based cottages. Camano Cottage serves children ages 6 to 12, Ketron Cottage serves youth up to age 14, San Juan Cottage serves youth ages 15-17 and Orcas Cottage serves the older youth up to their 18th birthday. Elementary, middle, and high school educational services are provided by the Clover Park School District under an agreement authorized by RCW 28A.190.040. CPSD coordinates educational planning with home school districts prior to admission and upon discharge.

Psychiatric treatment at CSTC incorporates the most current evidence-based practices including cognitive behavioral therapy, trauma-focused CBT, dialectical behavior therapy, skills development, family and recreational therapies. Clinical services include medication management and 24-hour nursing services. CSTC works with families, guardians and community supports in treatment and discharge planning so that children can successfully transition back to their family home, or community-based foster placement. CSTC is committed to culturally competent care for children with severe emotional disorders whose needs are often complicated by developmental, medical, social, and legal issues.

1.3.5 The Special Commitment Center — The Department of Social and Health Services operates SCC programs that provide specialized mental health treatment for civilly committed sex offenders who have completed their prison sentences. Superior courts in the county in which a person was convicted of a sex crime have the authority to determine if they meet the legal definition of a sexually violent predator and to civilly commit them to SCC.

Civilly committed residents first enter SCC's institutional program at the total confinement facility on McNeil Island. This Sex Offender Treatment Program consists of increasingly challenging levels of rigorous treatment.

Only SCC residents who have successfully completed the required levels of treatment in the institutional program and who receive DSHS recommendation are referred to the court for consideration for placement in a secure community transition facility. The SCC program currently operates two SCTFs: one on McNeil Island in Pierce County and the other in South Seattle in King County.

As a condition of release, each resident living in a court-ordered LRA placement must actively participate in a rigorous LRA treatment program with a highly qualified court-appointed community sex offender treatment provider. The provider must periodically report to the court on the resident's progress in treatment. The treatment provider, the assigned community corrections officer from the Department of Corrections, and the SCC Community Program psychologist or SCTF manager work as a team to oversee the individual treatment and public safety plan for each resident.

1.4 Community Partnerships

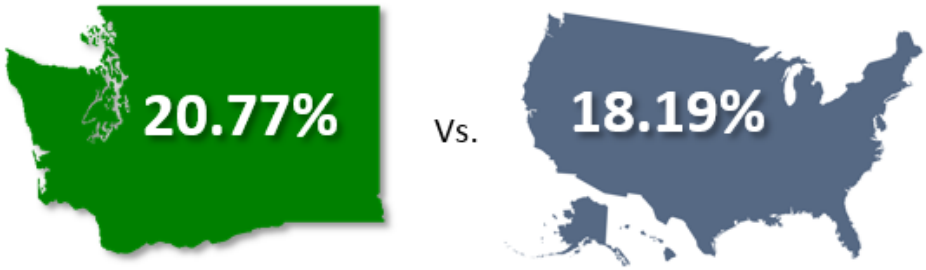
Patients whose medical needs require additional care beyond the hospitals are served in local medical hospitals and clinics. The hospitals work closely with the criminal court system to provide forensic evaluations throughout the state. Staff also work with behavioral health and managed care organizations in every county to ensure that patients receive adequate outpatient treatments and housing upon their discharge from a state hospital. As of 2021, these services are purchased by regionally operated behavioral health administrative service organizations through a managed-care structure.

2. OVERVIEW OF MENTAL AND BEHAVIORAL HEALTH CONDITIONS

2.1 Quick Facts and Trends

According to data from SAMSHA (Blandford & Osher, 2013), the rate of any mental illness among adults is higher in the state of Washington compared to the National average (See Figure 1.).

Figure 1. Rate of any mental illness among adults.



The rate of serious mental illness among adults is also higher in Washington compared to the national average (SAMHSA, 2013) (See Figure 2.).

Figure 2. Rate of serious mental illness among adults.

In forensic populations, the prevalence of mental illness is even higher. The estimated proportion of adults with mental health, substance use, and co-occurring disorders in U.S. population and under correctional control and supervision are shown below in Table 1.

Table 1. Estimated proportion of adults with mental health, substance use, and co-occurring disorders in U.S. population and under correctional control and supervision.

	General Public	State Prisons	Jails	Probation and Parole
Serious Mental Disorders	5.4%	16%	17%	7-9%
Substance Use Disorders	16%	53%	68%	35-40%
Co-occurring Substance Use Disorder w/Serious Mental Disorder	25%	59%	72%	49%
Co-occurring Serious Mental Disorder w/Substance Use Disorder	14.4%	59.7%	33.3%	21%

Source: Blandford and Osher (2013).

There are 10 times more individuals with serious mental illness in jails and state prisons than there are in state mental hospitals (Torrey, Zdanowicz, Kennard et al. 2014). Nationally, only one-in-three state prisoners and one-in-six jail inmates report having received mental health treatment since their admission (James and Glaze 2006).

Female inmates have higher rates of mental health problems than male inmates (state prisons: 73% of females and 55% of males; local jails: 75% of females and 63% of males) (James & Glaze, 2006). Also, Jail inmates who had a mental health problem (24%) were three times as likely as jail inmates without (8%) to report being physically or sexually abused in the past (James & Glaze, 2006).

People with mental illness are also at higher risk of re-entering the criminal court system (Barr, 1999). Approximately 49% percent of federal prisoners with mental illness have three or more prior probations, incarcerations or arrests, compared to 28% without mental illness (Ditton, 1999). Family members report that the average number of arrests for their relative with mental illness is more than three (McFarland, Faulkner, Bloom & Hallaux, 1989).

2.2 Types of Mental and Behavioral Health Conditions

Any type of mental or behavioral health disorder found in the general population is found among defendants in the criminal court system. This section of the manual presents some of the most common conditions, especially those that require consideration when determining the need for competency evaluation.

The assessment and diagnosis of clinical conditions are conducted by licensed health care providers. The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), published by the American Psychiatric Association (2013), is the handbook used by health care professionals to classify and diagnose mental health disorders. Mental illness is different than cognitive impairment or developmental disability, although they may both be present. The information presented here is intended to provide a general overview and should not be used for legal or clinical decision making.

Psychotic Disorders

Psychotic disorders are severe mental disorders that can result in abnormal thinking, delusions, and perceptual distortions. People with psychoses can be said to experience an altered reality. Two of the main symptoms are delusions and hallucinations:

Delusions are false or erroneous beliefs that usually involve a misinterpretation of perceptions or experiences. A person experiencing delusions may experience:

- Beliefs that someone is plotting against them (persecutory delusions).
- Beliefs that external forces are controlling their thoughts, feelings and behavior.
- Beliefs that trivial remarks, events, objects, or other environmental cues have personal meaning or significance, thinking that the TV is sending them secret messages.
- Thinking that they have special powers, are on a special mission, or that they are God.

Hallucinations are false perceptions that may occur in any sensory modality (e.g., auditory, olfactory, gustatory, visual, and tactile). For example, a person experiencing hallucinations may experience:

- Voices conducting a running commentary on the person's thoughts or behavior.
- Voices telling the person to commit acts of violence or self-harm.
- Feeling like something is crawling on or under their skin.
- Seeing someone take the shape of something, such as a demon.

In DSM-5, primary psychotic disorders are broadly classified under schizophrenia spectrum and other psychotic disorders. Schizophrenia is one type of psychotic disorder. Lack of insight into one's mental illness is very common among people with schizophrenia and may include a complete disbelief that they have a disorder. This can create barriers to engaging in treatment and to medication and treatment adherence. Ensuring engagement with treatment often requires external motivators (e.g. housing, financial and emotional support). Examples of other disorders with psychotic features are schizoaffective disorder, delusional disorder, schizophreniform disorder, and brief psychotic disorder.

People with bipolar disorder and depression (and transiently in personality disorders) may also present with psychotic symptoms. These can be differentiated from primary psychotic disorders due to their absence of psychosis in the absence of mood symptoms. The use of alcohol and some substances (e.g., marijuana, LSD, amphetamines and others) can precipitate psychosis in people who are already vulnerable. Other problems that can cause psychosis include metabolic abnormalities/delirium, dementia, brain tumors, brain infections, and stroke.

Treatment depends on the cause of the psychosis. Medications such as anti-psychotics, antidepressants and mood stabilizers help to control symptoms and individual or group therapy may be recommended. Hospitalization may also be appropriate for serious cases where a person might be dangerous to self or others or gravely disabled.

Depressive Disorders

Depressive disorders are characterized by sadness severe enough or persistent enough to impair social, occupational or other important areas of functioning. The term depression is often used to refer to any of several depressive disorders. The DSM-5 defines depressive disorders by specific types:

- Major depressive disorder (often called major depression and may be single or recurrent episodes)
- Persistent depressive disorder (also called dysthymia)
- Other specified or unspecified depressive disorder
- Premenstrual Dysphoric Disorder
- Substance/Medication-Induced Depressive Disorder
  Depressive Disorder Due to Another Medical Condition
- Disruptive Mood Dysregulation disorder (in children age 6-18).

Depressive symptoms or disorders may also accompany physical disorders, including vitamin and B12 deficiency, thyroid/parathyroid and adrenal gland disorders, stroke, traumatic brain injury, seizures, infections human immunodeficiency virus/acquired immunodeficiency syndrome, syphilis, hepatitis C, and Lyme disease, West Nile virus), Parkinson's disease, multiple sclerosis, and malignancies (paraneoplastic syndromes and pancreatic cancer). Certain medications, such as anti-epileptics, beta-blockers, corticosteroids, Interferon, Accutane, Chantix, Zyban, and reserpine can also result in depressive disorders.

Treatment may include medications and/or individual or group therapy. Psychiatric hospitalization is sometimes necessary.

NOTE: Mood disorders are less frequent than psychotic disorders in criminal forensic evaluations, but may be relevant in competence-to-stand-trial and insanity evaluations. They are more common in civil forensic evaluations, particularly disability evaluations (Parker, 2014).

Bipolar and Related Disorders

The two main types of bipolar disorders are bipolar I and bipolar II according to the DSM-5. Bipolar I disorder involves episodes of severe mania and often depression. Bipolar II disorder involves a less severe form of mania called hypomania. Mania is defined by a distinct period of abnormally and persistently elevated, expansive, or irritable mood lasting at least a week that is sufficiently severe to cause marked impairment in social/occupational functioning or in usual activities or relationships with others or to require hospitalization to prevent harm to self, others, or there are psychotic features.

A person experiencing a manic episode may have elevated self-esteem, little need for sleep, increased rate of speech (talking fast), experience flight of ideas or be easily distracted. They also typically have increased energy and interest in goals or activities though they may have difficulty finishing them. They may also engage in risky or reckless behavior, such as risky sexual behavior, excessive spending, or making impulsive decisions. During a hypomanic episode, a person may experience similar symptoms but they do not experience psychotic symptoms; it is still noticeable to others but does not cause major functional impairment. Many people who experience hypomania associated with bipolar II experience the feeling of increased energy and decreased need for sleep, but typically do not require hospitalization.

Treatment of bipolar I disorder is highly individualized and based on the types and severity of symptoms a person may be experiencing. Mood stabilizers and atypical antipsychotics are typically the core treatment. Behavioral and cognitive behavioral therapy may also be helpful.

Anxiety Disorders

Anxiety disorders are characterized by feelings of anxiety and fear that are severe and persistent enough to interfere with daily activities and functioning. Examples of anxiety disorders include generalized anxiety disorder, obsessive-compulsive disorder, post-traumatic stress disorder, panic disorder, and social anxiety disorder. Any of these conditions may co-occur with other mental health conditions and substance use. Persons with PTSD, for example, may also experience dissociative symptoms (i.e., flashbacks and intrusive thoughts), that must be differentiated from perceptual disturbances that occur in psychotic disorders.

Treatments for anxiety disorders may include psychotherapy, such as cognitive behavioral therapy, eye movement desensitization and reprocessing and medications including antidepressants and anti-anxiety agents.

Personality Disorders

Personality disorders are associated with enduring patterns of inner experience and behavior that markedly deviates from one's culture and causes difficulties with perception, interpersonal interactions, emotional regulation, and impulsivity. These patterns develop early, are inflexible, and are associated with significant distress or disability (APA, 2013).

Personality disorders fall within 10 distinct types: paranoid personality disorder, schizoid personality disorder, schizotypal personality disorder, antisocial personality disorder, borderline personality disorder, histrionic personality, narcissistic personality disorder, avoidant personality disorder, dependent personality disorder and obsessive-compulsive personality disorder (APA, 2013). Personality disorders may co-occur with other conditions and can influence competency of criminal defendants.

Examples of psychotherapy treatments for some personality disorders include dialectical behavioral therapy and cognitive therapy. Psychiatric medications may help with various symptoms and co-occurring disorders associated with personality disorders.

Neurocognitive Disorders

Neurocognitive disorder refers to impaired mental function from a medical condition other than a primary psychiatric disorder. Impaired brain function may be caused by:

- Trauma (bruising of the brain or bleeding into the brain or space around the brain),
- Lack of oxygen (hypoxia, hypercapnia)
- Cardiovascular disorders (e.g., stroke, atherosclerosis)
- Degenerative disorders (e.g., Parkinson's Disease, dementia caused by metabolic disorders)
- Delirium (electrolyte abnormalities, Infections (e.g., Meningitis), substance use, vitamin deficiency, etc.)

NOTE: Other conditions, such as depression, psychosis, etc. can mimic neurocognitive disorders.

Substance Use Disorders

Substance use disorders occur when the recurrent use of alcohol and/or substances causes clinically or functionally significant distress and often causes impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home. According to the DSM-5, a diagnosis of substance use disorder is based on evidence of increased impaired control, social impairment, risky use, and pharmacological criteria. Substance use disorders are defined as mild, moderate, or severe to indicate the level of severity, which is determined by the number of diagnostic criteria met by an individual.

Substance use disorder in DSM-5 combines the previous DSM-IV-TR categories of substance abuse and substance dependence into a single disorder measured on a continuum from mild to severe. Each specific substance (other than caffeine, which cannot be diagnosed as a substance use disorder) is addressed as a separate use disorder (e.g., alcohol use disorder, stimulant use disorder, etc.), but nearly all substances are diagnosed based on the same overarching criteria.

Co-occurring Disorders

A diagnosis of co-occurring mental illness and substance use disorder or "co-occurring disorder" (previously referred to as "dual diagnosis") describes the presence of both a mental disorder and a substance use disorder. National research suggests that as many as three out of every four criminal defendants in major cities test positive for illegal substances at the time of arrest (National Institute of Justice, 1998). People with substance use disorders are more likely to develop mental illness and people with mental illness are more likely to develop a substance use disorder (Peters & Hills, 1997; Massaro & Pepper, 1994).

People with co-occurring disorders are at higher risk for homelessness, human immunodeficiency virus (HIV), hepatitis C, violent behavior, trauma (e.g., post-traumatic stress disorder), unemployment, and social and family relationships problems (Peters & Hills, 1997; Broner, et al., 2000). The presence of co-occurring conditions may complicate the assessment and restoration of competency to stand trial.

Factitious Disorders

A person with a factitious disorder intentionally (consciously) produces, feigns or exaggerates the symptoms of a disease, illness or psychological condition with the aim of assuming the patient role. The motive varies but may include a desire to seek comfort and attention, attempt to gain access to medications, or a fascination with the medical field.

The DSM-5 criteria for factitious disorder (previously, when severe, was called Munchausen syndrome) include:

- Falsification of physical or psychological signs or symptoms or causing injury or disease with the deliberate intention to deceive
- Pretending to be sick or injured or to be impaired
- Continuing with the deception, even without receiving any visible benefit or reward
- Behavior is not better explained by another mental disorder, such as a delusional disorder or another psychotic disorder

The DSM- 5 categorizes factitious disorder into two types: Factitious disorder imposed on self and factious disorder imposed on another. This later condition is when a person deliberately produces, feigns, or exaggerates the symptoms of someone in his or her care.

Malingering

The DSM-5 describes malingering as the intentional production of false or grossly exaggerated physical or psychological problems (APA, 2013). Malingering is not considered a mental illness although it may be assessed and coded in a forensic evaluation (it is given a "V" code in DSM-5, V65.2). Malingered conditions may include dissociative identity disorder, mood disorders/suicidality, psychosis (e.g., hallucinations), PTSD, amnesia, cognitive deficits, and dementia.

Motivation for malingering is usually external (e.g., avoiding work, obtaining financial compensation, evading criminal prosecution, or obtaining drugs) (APA, 2013). The clinical interview is key in the assessment of malingering, and when malingering is suspected, forensic evaluators may use malingering tests to assess for it.

Intellectual and Developmental Disability

In DSM-5, intellectual and developmental disorders are classified under neurodevelopmental disorders. Intellectual disability (intellectual developmental disorder) as a DSM-5 diagnostic term replaces “mental retardation” used in previous editions of the manual. Intellectual disability involves impairments of general mental abilities that impact adaptive functioning in three domains, or areas. The diagnostic criteria, as defined by the DSM-5 are:

- Deficits in **intellectual functioning** such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning (ability to learn in school via traditional teaching methods), and experiential learning (the ability to learn through experience, trial and error, and observation).
- Deficits or impairments in **adaptive functioning** (skills are needed for daily living) such as communication, social skills, personal independence at home or in community settings, and social or work functioning.
- These limitations must occur during the developmental period (were evident during childhood or adolescence). If the problems began after the developmental period, the correct diagnosis might be neurocognitive disorder.

NOTE: Mental abilities are measured by standardized intelligence quotient (IQ) tests administered by professionals.

In Washington, RCW 71A.10.020 defines "developmental disability" as “a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.” (RCW 71A.10.020)

2.3 Cultural Considerations

Lack of knowledge of certain cultural beliefs or practices can result in erroneous conclusions, whether during a forensic competency evaluation or in the courtroom. For example, visual or auditory hallucinations with a religious content, such as hearing God’s voice, may be viewed as a normal part of religious experience (Tseng, Elwyn, & Matthews, 2004). It is essential to be responsive to ethno-cultural differences in etiological and causal models of health and disorder, patterns of disorder, standards of normality, and treatment alternatives.

As part of ethical standards, mental health providers in the forensic system strive to maintain cultural competence as it relates to their practice. Cultural competence is the application of knowledge, skills, experience, and personal attributes to respond respectfully and effectively to people of all cultures, races, ethnic backgrounds, and religions in a manner that recognizes, and values the cultural differences and similarities of individuals, families, and communities. For more information relevant to culture and forensic mental health, see the Resources section of this manual.

3. COMPETENCY TO STAND TRIAL

3.1 Background

Competency to stand trial, or adjudicative competence, is the legal construct that refers to a criminal defendant's ability to participate in legal proceedings related to an alleged offense (Mossman et al., 2007). The U.S Supreme Court established the current legal standard for determining competency to stand trial in *Dusky v. United States* (1960). The standard of competence is whether a defendant lacks the "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him." (*Dusky v US*; 362 U.S. 402; 1960). In Washington, 'incompetency' means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect (RCW 10.77.010). Incompetence may occur during any stage of legal proceedings and "no incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues." (RCW 10.77.050). The competency to stand trial process is shown in Figure 3.

NOTE: Some defendants may be aware that they have a mental illness, but they may not have insight into its influence on their judgment. This may persist even when psychiatric symptoms are in remission.

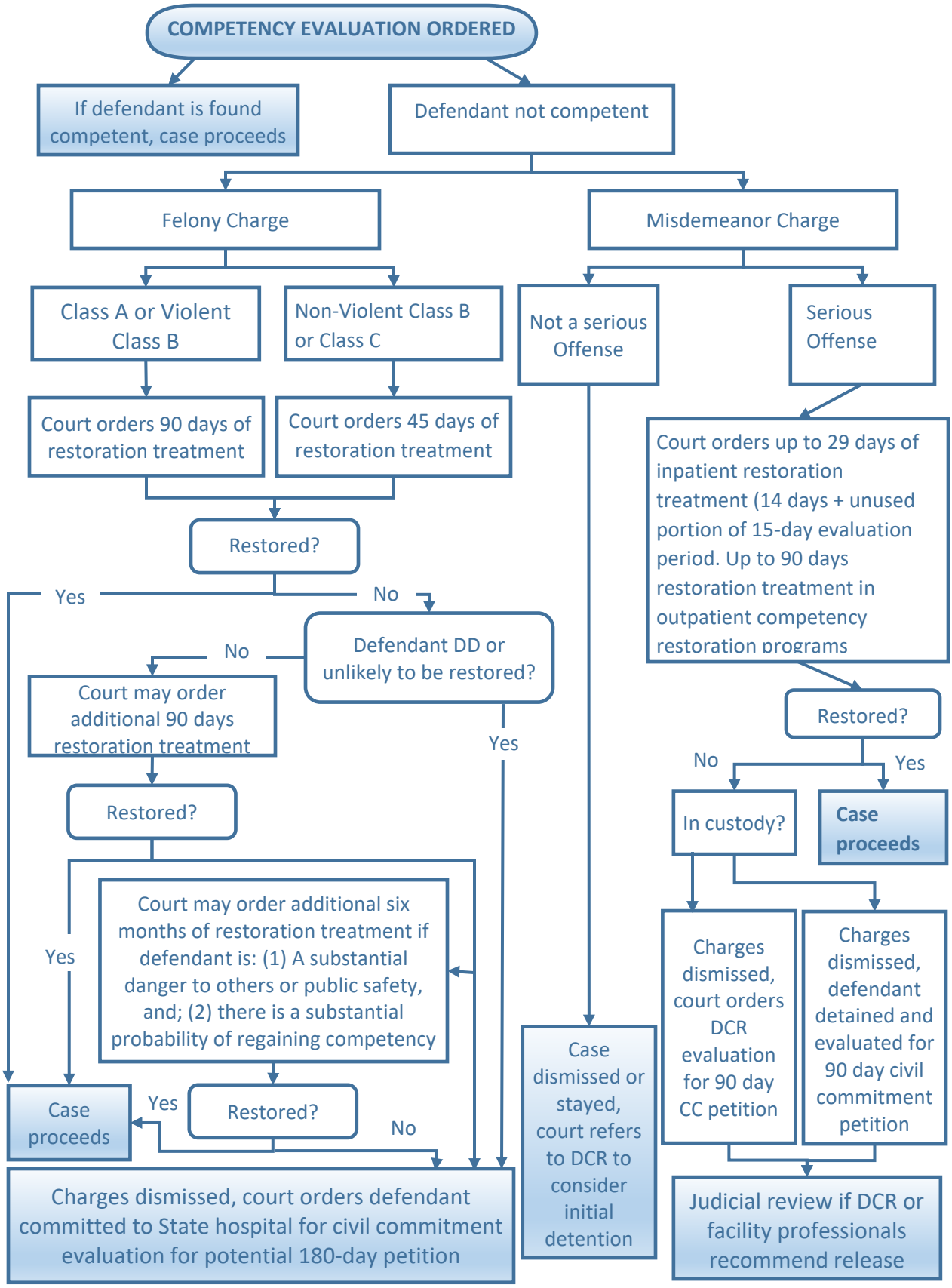
3.2 Competency Evaluation and Restoration Treatment Court Orders

Evaluations of competency to stand trial are the most common source of referrals to forensic mental health treatment providers nationally and in Washington (Gowensmith, Murrie, & Packer, 2014). DSHS is mandated to provide forensic evaluation and treatment services when court ordered. Evaluations are conducted only under valid court order and after counsel has been appointed, unless waived pursuant to state law (see RCW 10.77.020).

The Administrative Office of the Courts released standardized forms for RCW 10.77. Forms for court orders are available at www.courts.wa.gov/forms. By checking the box for "Department Facility" on court orders for competency services, you can allow DSHS to place a person for restoration services in a state hospital or one of the two DSHS residential treatment facilities (see **Section 4.2**) depending on the needs of the defendant. Additionally, the court may choose to order that the person participate in outpatient competency restoration treatment as discussed in Section 4.4.

3.3 Competency Referral Screening Assessment

Figure 3. Competency to Stand Trial Process.



3.4 Competency Evaluation Process

Forensic evaluations may be conducted in inpatient facilities, jails, or in community settings. In Washington, the majority of forensic evaluations are conducted by DSHS employees. State statute requires that the evaluator's report include the following (as pursuant to RCW 10.77.060):

- A description of the nature of the evaluation;
- A diagnosis of the mental status of the defendant;
- An opinion as to the defendant's competency, and an opinion regarding insanity if insanity is claimed, and an evaluation and report by an expert or professional person has been provided that meets statutory criteria (RCW 10.77.060(3)(d));
- An opinion as to whether the defendant should be evaluated by a designated crisis responder under the Involuntary Treatment Act.

The evaluation is then submitted to the court, and if the court finds that the defendant is competent, the case proceeds to trial. If the court concludes that the defendant is not competent, a period of treatment may be authorized to restore the defendant to competency. If the person is restored to competency, the case proceeds to trial.

NOTE: The role of forensic evaluators differs from that of treatment providers. Depending on the nature of the case, forensic evaluators evaluate issues including, but not limited to, defendants' competence to stand trial, their mental state at the time of the offense (i.e., insanity), and their risk for future violent behavior (forensic risk assessments). Treatment providers are responsible for psychological intervention or treatment of individuals in both criminal and civil cases (e.g., competency restoration or civil commitment) who require or who request these services.

3.5 Sell Orders

A Sell Order is an authorization to administer antipsychotic medications involuntarily. In *Sell v. United States*, (539 U.S. 166 (2003)) the United States Supreme Court held that the Constitution allows the government to administer antipsychotic medications involuntarily to a mentally ill criminal detainee in order to render that defendant competent to stand trial for serious, but nonviolent crimes. (539 U.S. 169 (2003).

In Washington, it is typically the responsibility of the treating psychiatrist to initiate Sell Hearing proceedings. The process is typically as follows:

1. If the defendant refuses medications, or has a pattern of inadequate medication compliance lasting at least a week, and it is the opinion of the treating psychiatrist that the defendant cannot be restored without medication, then the treating psychiatrist will send a letter to the court requesting a Sell Hearing (unless the court has indicated that a hearing has already been scheduled).
2. If the defendant returns from the Sell Hearing (a) without an order for the forced administration of medication, and (b) the defendant continues to refuse to take medication, and (c) it is the opinion of the evaluators that the defendant will not be restored without medication compliance, a report will be submitted to the court indicating the clinically relevant information and rendering an opinion on the defendant's current capacities to stand trial.
3. If the court grants a Sell Order, the treatment facility is authorized to administer involuntary medications as deemed necessary to support the patient becoming competent to stand trial.

4. COMPETENCY RESTORATION SERVICES

4.1 Overview

While the majority of defendants evaluated for competency to stand trial are viewed as competent to proceed, those found incompetent to stand trial may be referred to treatment and specialized training to enable them to proceed to trial. This process is typically referred to as competency restoration. These persons constitute the largest group referred for inpatient mental health treatment within the criminal-legal system (Cutler, 2008).

Most incompetent adult defendants are sent to Western State Hospital or Eastern State Hospital for competency restoration. Alternate restoration facilities are also in use, and are described in the following section. Outpatient competency restoration programs were added in 2020 for defendants who meet specified criteria to receive treatment through contracted community health providers. These OCRP are located in Pierce County; the Southwest Region; and the Spokane region. Additionally, OCRP services are slated to begin in King County in 2022.

NOTE: Jails and prisons also have a constitutional obligation to provide treatment to inmates with serious medical and psychiatric conditions (Veysey, Bichler-Robertson, 2002). Types of treatments in these settings may include medication, counselling (e.g., individual or group therapy), and rehabilitation (e.g., involvement in a program directed at enabling people to live safely within the community).

4.2 Residential Treatment Facilities Overview

Prior to 2016, all competency restoration treatment services in Washington took place within the two state psychiatric hospitals. However, the limited number of available beds for restoration treatment services was complicating DSHS ability to get patients into restoration treatment in a timely manner. In 2016, DSHS expanded bed capacity by creating two new residential treatment facilities where pretrial adult defendants could receive competency restoration services. These RTFs serve patients who are assessed to be relatively low in their risk to harm themselves or others and do not present with complex medical needs. Defendants ordered into competency restoration services are assessed through a centralized screening process to determine which treatment facility best matches their needs. Both WSH and ESH continue to be options for screened and selected patients. In cases where the centralized screening identifies the patient as a candidate for RTF admission, the patient is screened by RTF clinical staff to determine their appropriateness for the RTF program. State law gives the secretary of DSHS the discretion for placement for competency restoration. (*See* RCW 10.77.084(1)(b), 10.77.086(1)(a)(i) and 10.77.088(1)(a); and WAC 246-337-080(2)(a).)

The Maple Lane Competency Restoration Program (shown in Figure 4) is a 30-bed facility located at 20311 Old Highway 9 SW, Centralia.

Figure 4. Maple Lane Competency Restoration Program

The Yakima Competency Restoration Program (shown in Figure 5) was a 24-bed facility located at 1500 Pacific Avenue, Yakima.

Figure 5. Yakima Competency Restoration Program

As part of the *Trueblood v. DSHS* federal court case these two RTFs were opened as temporary facilities. The Yakima program closed in July 2021. The Maple Lane program is scheduled to close by June 30, 2024.

In 2019, DSHS opened a permanent competency restoration RTF in Lakewood. The Fort Steilacoom Competency Restoration Program (shown in Figure 6), opened in 2019. It is a 30-bed facility located on the Western State Hospital Campus.

Figure 6. Fort Steilacoom Competency Restoration Program

4.2.1 Transportation of Defendants to/from Residential Treatment Facilities

Transportation for patients coming from jails are arranged by the sending county. Patients coming to the alternate site from a state psychiatric hospital are transported by DSHS.

RCW 10.77.078 states that jails must transport a defendant to competency restoration sites within one day of an offer of admission and must provide a defendant's medical clearance to the state hospital admissions staff. In order to make efficient use of the new facilities and place defendants in the most appropriate facility, DSHS requests that jails provide available information to DSHS admissions staff who screen individuals for placement. This would include information about the patient's behavior within the jail, the patient's willingness to take prescribed medications, and other relevant information.

4.2.2 Medication and Personal Belongings at Residential Treatment Facilities

Unlike the hospitals, the alternate sites do not have an on-site pharmacy and must coordinate medication orders through community pharmacies. DSHS works with jails to ensure that five days of medications are sent with incoming patients and sent out with patients. This five-day supply bridges the medication gap until it is ordered and received by the RTF.

Storage space is limited at these facilities. DSHS requests that incoming patients come only with the clothes worn for transport, the requested medications and, if required, copies of their court documents.

4.2.3 Visitation at the Residential Treatment Facilities

Just like the state hospitals, attorneys and family members are able to visit patients at the RTFs or communicate by telephone.

4.3 Triage Consultation and Expedited Admission

The Office of Forensic Mental Health Services operates a triage consultation and expedited admission system to facilitate the expedited admission of persons who meet certain criteria that would justify prioritizing the person's admission to a state psychiatric hospital for evaluation for competency to stand trial or competency restoration services. The triage consultation and expedited admission system is not appropriate for people in need of emergency medical services, as those individuals should be referred for immediate medical attention. For more information about the process, visit the OFMHS TCEA website: www.dshs.wa.gov/bha/triage-consultation-and-expedited-admission.

4.4 Outpatient Competency Restoration Program

As discussed above, inpatient competency restoration treatment is provided by DSHS. Additionally, OCRP services were added in 2020. OCRP provides courts with a competency restoration treatment option that is based in the community as distinct from an inpatient facility. OCRP is designed to provide services to people who are appropriate for community-based services, as determined by the courts, and who are amenable to participate in psychotropic medication management and abstain from alcohol and unprescribed substances.

OCRP is managed by the Washington State Health Care Authority through contracted community health providers. These OCRP are located in Pierce County; the Southwest Region; and the Spokane region. OCRP services are slated to begin in King County in 2022.When a person is court-ordered into OCRP, they receive support and monitoring by a forensic navigator who facilitates community treatment connections, refers the person to an OCRP provider, and reports to the ordering court regarding progress of the person in OCRP. OCRP providers use the Breaking Barriers competency restoration treatment model used by DSHS inpatient restoration treatment programs. OCRP providers utilize treatment interventions such as individual and group psychotherapy and psychoeducational interventions that focus on a person's identified barriers to competency. OCRP connects people to adult outpatient behavioral health treatment, including treatment for substance use disorders, and provides clinical and peer support while in the program. If the person is homeless or unstably housed, they are referred to Forensic Housing and Recovery through Peer Services that provides housing supports and subsidies (with the goal of obtaining permanent housing) for the person for the duration of their time in OCRP and potentially beyond. If the person is on the Forensic Projects for Assistance in Transition from Homelessness Referral List, they are referred to the FPATH-contracted provider in that area also provides additional supports to the person.

4.5 Competency Restoration Treatment

Treatment programs for the restoration of competence typically target mental disorders that interfere with a person's competency to stand trial. Improvement in the underlying mental disorder often results in improvement in the individual's competency to stand trial. The most common form of treatment for restoration of competence involves the administration of psychiatric medication.

Competency Restoration treatment may consist of:

- Administration of psychiatric medications. Medication is the most frequent form of treatment. Medication such as antidepressants, antipsychotics and other medications control some of the symptoms of mental illness.

- Group and individual psychotherapy that addresses social skills for working with court staff and managing mental illness.
- Education designed to increase a defendant's understanding of the legal process.
- Recreational and psychosocial activities.
- Medical treatment if necessary.

Competency restoration treatment also recognizes the possible presence of trauma symptoms and the role that histories of trauma and exposure to violence may play in a person's life. Traumatic events can include a history of physical and sexual abuse or assault, domestic violence, neglect, bullying, community-based violence (e.g., exposure to gang violence, police and citizen altercations), disaster, terrorism, and the experience of war (SAMSHA, 2014). Involvement with the criminal court system can further exacerbate trauma for individuals with histories of trauma experiences (SAMSHA, 2016). Trauma-informed care is an approach used to engage people with histories of trauma. For more information on trauma-informed care, see store.samhsa.gov/shin/content//SMA14-4816/SMA14-4816.pdf.

In Washington, the length of the competency restoration treatment period depends upon the type of criminal charge. Defendants charged with misdemeanor offenses qualify for an initial 14 to 29 days of inpatient restoration treatment or a maximum of 90 days of outpatient restoration treatment. Defendants charged with Class C or non-violent Class B felony offenses qualify for an initial treatment period of 45 days. Defendants charged with violent Class B and Class A felonies qualify for an initial treatment period of up to 90 days (see RCW 10.77).

Most felony defendants treated for restoration to competency in Washington are restored to competency within 90 days. Evidence from the research literatures suggests that defendants that take the longest to restore to competence are those with developmental disabilities and those with longstanding psychotic disorders that have resulted in lengthy periods of hospitalization (Warren et al. 2013). Factors that have been found to be associated with nonrestorability (Colwell & Gianesini, 2011; Morris & Parker, 2009; Mossman, 2007; Warren et al. 2013) include:

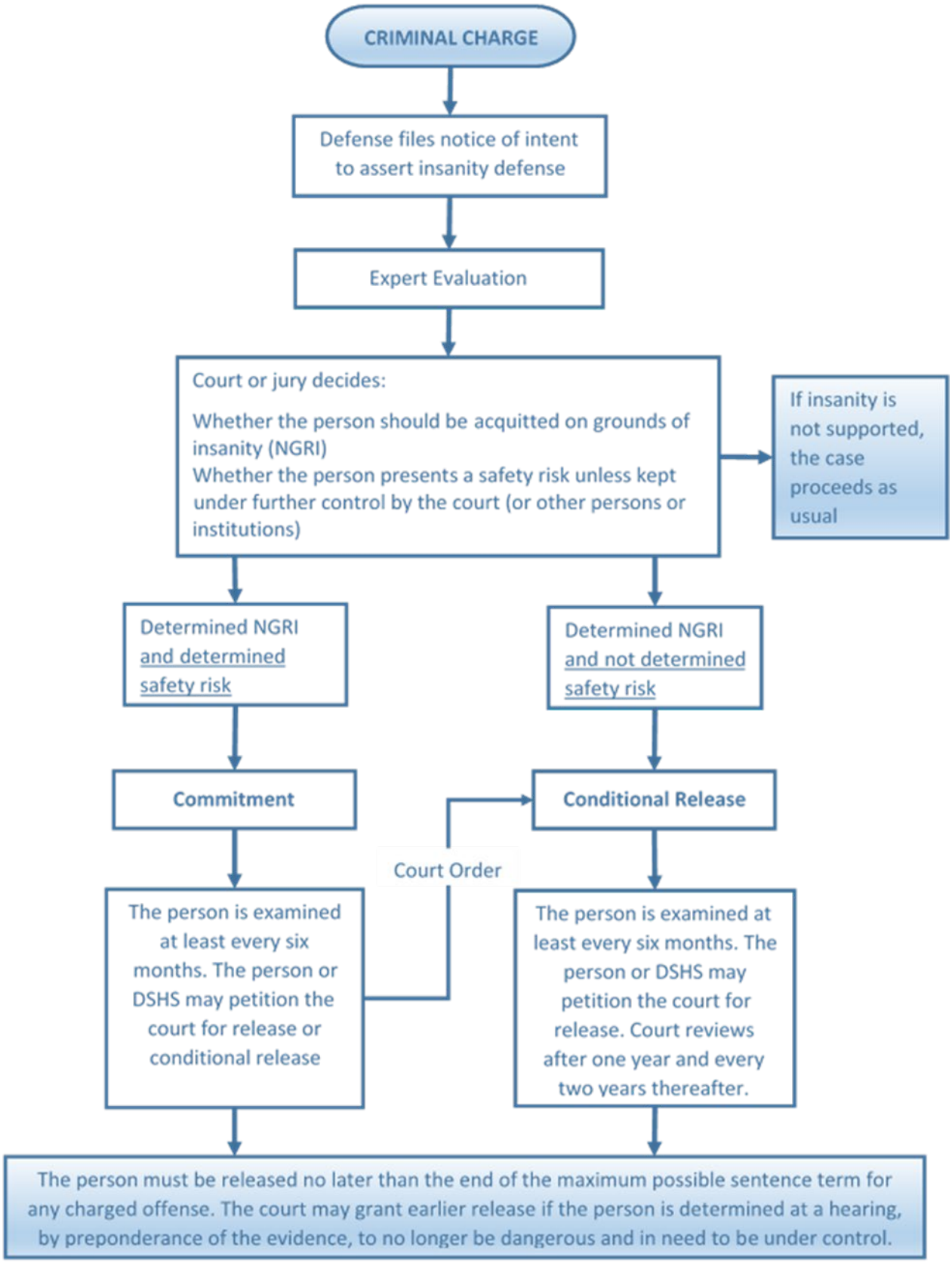
- Age over age 65 (even when accounting for dementia)
- Chronic psychotic illness (particularly schizophrenia or schizoaffective disorder), a history of lengthy hospitalizations, and severe impairment in daily living
- Irremediable cognitive disorder such as intellectual disorder or dementia
- Men were more likely than women to be nonrestorable
- Lower-level charges (misdemeanors)

5. NOT GUILTY BY REASON OF INSANITY

5.1 Background

When defendants plead not guilty by reason of insanity, they are admitting that they committed a crime, but seek to excuse their behavior by reason of mental illness that satisfies the definition of legal insanity. A "criminally insane" person is any person who has been acquitted of a crime charged by reason of insanity, and thereupon found to be a substantial danger to other persons or to present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions (RCW 10.77.010). The process for civil

commitment and NGRI is shown in **Figure 7**. For more information on maximum term of commitment or treatment, see RCW 10.77.025.


CRIMINAL CHARGE
Defense files notice of intent to assert insanity defense
Expert Evaluation
Court or jury decides:
Whether the person should be acquitted on grounds of insanity (NGRI)
Whether the person presents a safety risk unless kept under further control by the court (or other persons or institutions)
If insanity is not supported, the case proceeds as usual
Determined NGRI and determined safety risk
Determined NGRI and not determined safety risk
Commitment
Conditional Release
Court Order
The person is examined at least every six months. The person or DSHS may petition the court for release or conditional release
The person is examined at least every six months. The person or DSHS may petition the court for release. Court reviews after one year and every two years thereafter.
The person must be released no later than the end of the maximum possible sentence term for any charged offense. The court may grant earlier release if the person is determined at a hearing, by preponderance of the evidence, to no longer be dangerous and in need to be under control.

5.2 Mental Health Treatment following NGRI

Individuals who have been found NGRI require attention for clinical and legal needs as a result of their connection to both the mental health and criminal court systems. Some NGRI acquittees may be discharged into community treatment programs.

5.3 Public Safety Review Panel

The Washington State Legislature established the Public Safety Review Panel in 2010 (Chapter 263, Laws of 2010), to independently assess and provide advice to the secretary of the DSHS and to the courts, regarding potential risk to public safety related to the proposed conditional release or final discharge of patients found not guilty by reason of insanity committed to Western State Hospital or Eastern State Hospital.

In 2013, the Washington State Legislature expanded the jurisdiction of the PSRP, Chapter 289, Laws of 2013, to include patients civilly committed to WSH or ESH after the court found the criminal defendant not competent to stand trial for a violent offense (RCW 9.94A.030).

6. CIVIL COMITTMENT

6.1 Background

Civil Commitment is the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less-restrictive setting (RCW 71.05.020)**.** The presence of a behavioral health disorder is a prerequisite for civil commitment. Other criteria frequently include dangerous behavior toward self or others, grave disability, and the need for treatment. Involuntary commitment under RCW 71.05 is a civil proceeding and is not part of the criminal court system.

6.2 Felony Conversions

A “felony conversion” is when a defendant’s felony charges are dismissed and a civil commitment is pursued. A court may dismiss criminal charges due to the lack of competence. The person is then sent to the state psychiatric hospital to be evaluated to determine if they meet criteria under RCW 71.05 for civil commitment to the hospital due to their mental illness. Pursuant to RCW 10.77.086(4) charges are dismissed without prejudice, allowing the court to re-charge the person in the future, if they are later determined to have regained competency.

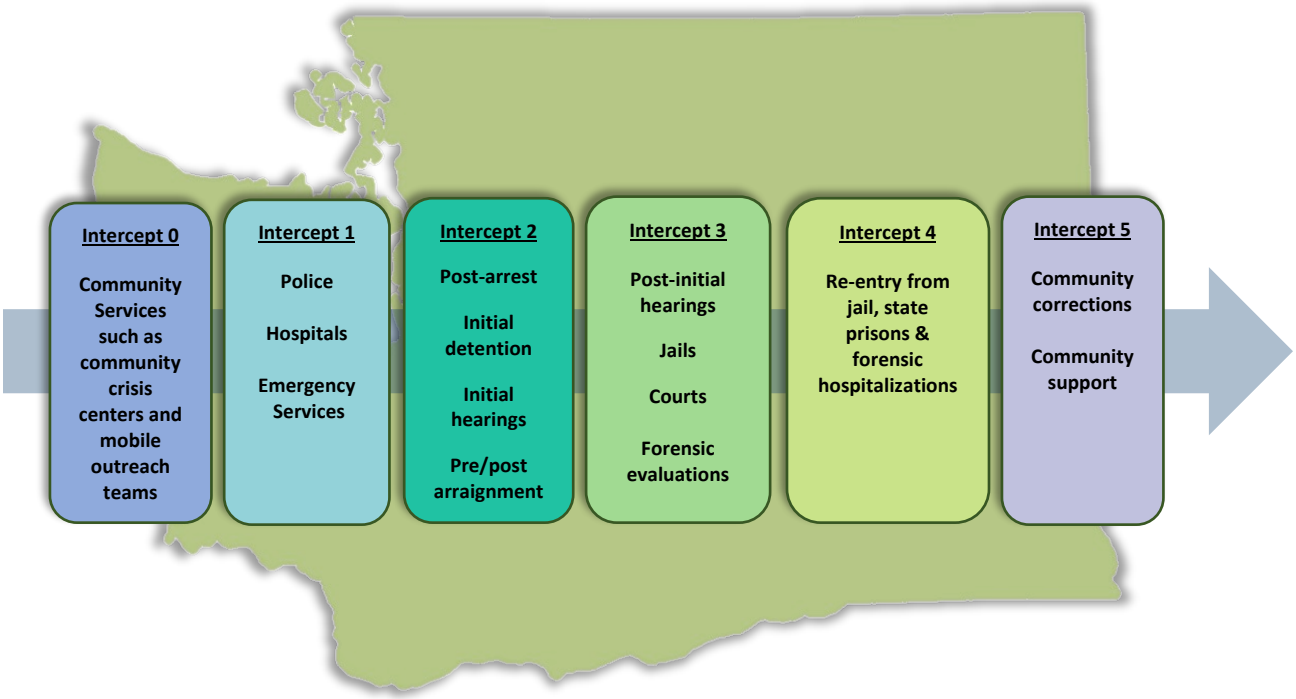
7. DIVERSION PROGRAMS

Successful screening and assessment early in the criminal justice process (including pre-trial) are key to diverting people into treatment programs. Diversion programs are often run by a police department, court, or behavioral health organization/outside agency designed to enable individuals to avoid criminal charges or a criminal convictions.

The Sequential Intercept Model (Munetz & Griffin, 2006) (See **Figure 8.**) provides a framework for conceptualizing the interface between the criminal justice and mental health systems. The intercept model has several key objectives that include (Munetz & Griffin, 2006):

- Preventing initial involvement with the criminal court system
- Decreasing admissions to jail
- Engaging persons in treatment as soon as possible
- Minimizing time moving through the criminal court system
- Connecting people to community treatment options
- Decreasing the rate of return to the criminal court system

Figure 8. The Diversion (Sequential) Intercept Model.



7.1 Law Enforcement and Emergency Services

Pre-arrest diversion is the first point of interception for people with behavioral health needs. Law enforcement and emergency service professionals are often the initial point of contact for individuals in crisis. Oftentimes law enforcement officers may lack knowledge of alternatives or find it difficult to immediately access behavioral health services. Crisis Intervention Teams and police-mental health co-responder teams are trained to link people with mental illnesses to treatment without arrest.

Police diversion programs are built on partnerships between mental health providers in the community and designated police units, with the aim of identifying serious mental illness, de-escalating situations with minimal police force, decreasing stigmatization, and when appropriate, linking a person to treatment rather than booking them into jail.

7.2 Jails and Courts

Jail diversion helps people with behavioral health needs receive treatment through various alternatives to incarceration. While programs that divert people to treatment incur healthcare system costs, providing treatment in the community is typically less expensive than serving people in criminal justice settings. There is also the potential for large cost offsets, because diversion can prevent further criminal justice involvement. Jail diversion helps reduce expenditures associated with unnecessary arrests and detentions.

Post-arrest diversion options include the use of mental health screening tools after arrest to quickly identify people who have behavioral health needs and refer them to appropriate services either in-jail or in the community. In addition, specialized courts, including drug, mental health, and veterans' courts have shown to be an effective way to divert people with behavioral health needs from incarceration and into treatment (Sarteschi, Vaughn, & Kim, 2011). These voluntary programs operate both pre- and post-adjudication, and allow participants to access treatment as an alternative to incarceration.

7.3 Who to Contact About Diversion Programs

If you would like additional information about county-specific diversion programming, please contact your county Behavioral Health Organization. The Office of Forensic Mental Health Services can also connect partners and stakeholders to appropriate contacts at the BHO level and can help facilitate diversion conversations activities in your local area. For more information, contact Liaison and Diversion Specialist Jason Karpen at Jason.Karpen@dshs.wa.gov.

ADDITIONAL RESOURCES

The Office of Forensic Mental Health Services website (www.dshs.wa.gov/bha/office-forensic-mental-health-services/jail-technical-assistance-program) provides useful information and contact information for forensic mental health services in the State of Washington.

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The National Alliance on Mental Illness website.

Administrative Office of the Courts website. The site provides forms that are used statewide in Washington Courts.

The **Washington State Health Care Authority** Behavioral Health and Recovery website.

GLOSSARY

BHO – Behavioral Health Organization

CFS – Center for Forensic Services

CBT – Cognitive Behavioral Therapy

Competency restoration – The process of helping a person regain or achieve the capacity to assist an attorney in their defense.

Crisis Intervention Teams – A model for community policing that brings together law enforcement, mental health providers, hospital emergency departments and individuals with mental illness and their families to improve responses to people in crisis.

CSTC – Child Study and Treatment Center

DBT – Dialectical Behavioral Therapy

DCR – Designated Crisis Responder

DSM-5 – Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition

Felony conversion – When a defendant's felony charges are dismissed and a civil commitment is pursued.

Forensic Commitment – The act of involuntarily placing an adult defendant in a secure facility due to incompetence to proceed or insanity and the need for care due to dangerousness or self-neglect.

Incompetent to Proceed/Incompetent to Stand Trial – A mental illness or developmental disability renders the defendant incapable of effectively helping in his or her defense.

ITA - Involuntary Treatment Act – The involuntary placement of an adult person for the purpose of treating a mental illness that renders the person dangerous to themselves or others or gravely disabled.

MCO – Managed Care Organization

NGRI – Not Guilty by Reason of Insanity

NRO – Northern Regional Office

OCRP – Outpatient Competency Restoration Programs

OFMHS – Office of Forensic Mental Health Services

Pretrial intervention – Persons charged with a non-violent felony in the third degree may be eligible for interventions such as victim restitution, counseling and community service. The completion of conditions results in the State Attorney's Office not prosecuting the case.

RCW – Revised Code of Washington

Sell Order – An authorization to administer medications involuntarily for the purpose of competency restoration.

Trauma-informed care – a treatment approach used to engage people with histories of trauma.

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