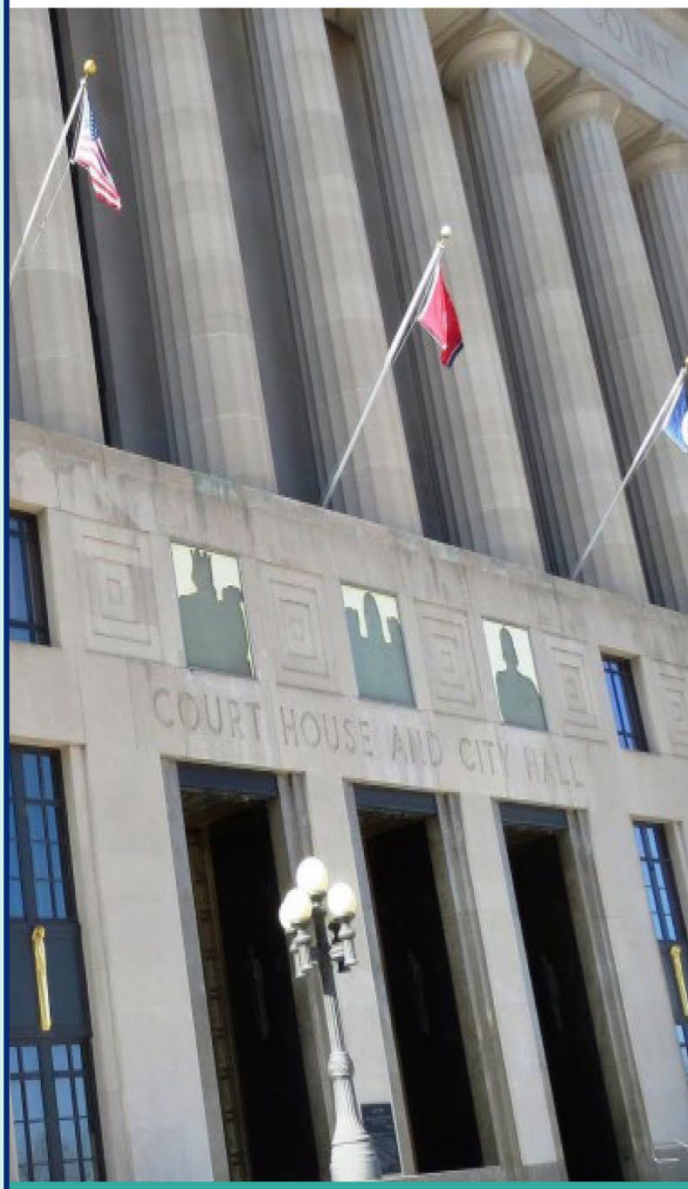
Task Force on Competency & Wellbeing:

Findings & Recommendations



Davidson County General Sessions Court,
Division II Mental Health and Veterans Court
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April 2022

Nashville/Davidson County, Tennessee

The Task Force on Compentency & Wellbeing

The Task Force on Competency and Wellbeing engaged elected officials and providers directly involved in the competency restoration process. Judge Melissa Blackburn and her colleagues, District Attorney General Glenn Funk, Public Defender Martesha Johnson, and Sheriff Daron Hall initiated the effort and included the Mayor's Office. Participants hailed from the following departments and agencies.

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This report summarizes the findings and recommendations of the Task Force, which conducted its work over four months, September 2021 through January 2022. The founding members of the Task Force wish to thank all participants for their time and contributions to this effort and for their dedication to the residents of Davidson County, especially individuals with severe and persistent mental health conditions.

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Katie Schlotman, MPH, Epidemiologist at the Division of Behavioral Health and Wellness at MPHD conducted the comparative analysis of administrative data sets that appears in this report.

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Executive Summary

In the fall of 2021, the Davidson County Task Force on Competency and Wellbeing[1] convened to develop an initial set of recommendations that address care and supports for individuals, who are charged with misdemeanors and deemed incompetent to stand trial. At the time that the Task Force began its work, 182 individuals constituted this population.[2] This effort aims to divert and deflect these individuals from entering and re-entering the justice system or cycling through a hospital emergency room. By introducing a public health approach, the Task Force seeks to establish access to care and pathways for stability in the community. Through intentional referral and connections to the level of ongoing care and supports that will aid them in managing acute and untreated mental health conditions, these individuals will achieve improved health outcomes and stability in the community. In effect, the Task Force convened to address what is now referred to as the crisis in competence to stand trial (CST).[3]

For some jurisdictions, this crisis involves lengthy jail time awaiting competency restoration services.[4] For Davidson County, this crisis can be defined as individuals cycling through the arrest process and court system for minor charges (misdemeanor offenses), which can reflect psychiatric instability. These misdemeanor offenses are subsequently dismissed by the court due to a finding of incompetence to stand trial.[5] Released from jail, the individual often re-offends (usually a misdemeanor) and begins the process again as they have not been successfully connected to care or supports that can provide them what they need to break the cycle. The cycle of arrest and adjudication erodes the possibility of improving the individual's wellbeing to ultimately remain out of the criminal justice system. Further, it creates a backlog of cases, which is costly to the county and can impede swift due process for defendants, which can become a liability for local government.

The Task Force identified several barriers that stand in the way of this population to establish competency and wellbeing. Some of these barriers relate directly to how competency restoration is

[1] The Task Force on Competency and Wellbeing engaged elected officials and providers directly involved in the competency restoration process. Judge Melissa Blackburn and her colleagues, District Attorney General Glenn Funk, Public Defender Martesha Johnson, and Sheriff Daron Hall initiated the effort and included the Mayor's Office. Participants hailed from the following departments and agencies: General Sessions Court, Division 2 Mental Health and Veterans Court; Davidson County District Attorney General; Davidson County Public Defender; Davidson County Sheriff's Office; Nashville/Davidson County Office of the Mayor; Metro Public Health Department; Metro Nashville Police Department; Mayor's Behavioral Health and Wellness Advisory Council; Tennessee Department of Mental Health and Substance Abuse Services; Centerstone, Inc.; Mental Health Cooperative, Inc; Park Center, Inc.; and, Vanderbilt University Medical Center – Forensic Evaluation Team. Discussions also involved the Tennessee Department of Intellectual and Developmental Disabilities and the ARC Tennessee on individuals whose competency was non-restorable due to neurocognitive disorder or intellectual and developmental disabilities. Finally, several members of the Task Force attended the Summit on Competency Restoration hosted by the SAMHSA's GAINS Center for Behavioral Health and Justice Transformation on December 13, 2021.

[2] Davidson County Criminal Justice Information System. This population reflects individuals with misdemeanor only offenses who have received at least one forensic evaluation conducted by the Vanderbilt Forensic Evaluation Team between October 2017 and June 16, 2021.

[3] Just and Well: Rethinking How States Approach Competency to Stand Trial. CSG Justice Center; American Psychiatric Association Foundation, et.al. October 2020.

[4] Authorized by state law and typically funded under the state mental health authority, these services seek to return an individual to the court system as competent for adjudication. This means that the individual has a factual and rational understanding of their legal situation and the rational ability to assist in their defense. Restoration services can include medication and educational therapeutic, and recreational services. Competency restoration services have been designed specifically to return an individual to the court system and not for sustained recovery and management of a mental health condition.

[5] T.C.A § Chapter 33 – 7 – 301 (a) 4a: "…a defendant is incompetent to assist counsel in preparation for, or otherwise participate in, the post-conviction proceeding, the court may, upon its own motion, order that the defendant be evaluated on either an outpatient or inpatient basis…"

authorized by law in Tennessee and funded. Other barriers reflect how the legal system itself does not support the creation of intentional referral to care. Task Force members also noted that, while there are some essential supports in place - mental health treatment in the county jail or at the Behavioral Care Center, or the development of outpatient care plans, for example - these resources do not provide comprehensive linkage to other consequential forms of care or supports that might improve an individual's long-term stability or wellbeing in the community.

Task Force members found that these barriers, taken together, contribute to a high rate of reincarceration among this population of defendants: 60% of the current population is anticipated to be re-arrested within 90 days and experiences arrest at more than twice the rate of individuals charged with misdemeanors who are competent to stand trial.[6] The average wait time for a 30-day evaluation at MTMHI is 60 days, though at times has been as high as 90 days.

Further, data show that 53% of the population are African American, and fully 40% are Black men, reflecting disproportionate representation in comparison to county population. The administrative data available during this process was not robust enough to address questions of health equity or to align recommendations to the demand for services since data could not be disaggregated beyond demographics, diagnosis, and offense type.

Additional analysis shows that this population experiences complex conditions and can be characterized as multi-barriered: Thirty percent experience homelessness, over 70% have a primary diagnosis with psychotic symptoms, 75% have a co-occurring diagnosis of addiction, and nearly 60% of the population is between the ages of 31 and 64. However, without additional options for restoration and connection to care and services, these individuals cycle through the criminal justice system, with longer periods of incarceration.

The recommendations developed by the Task Force represent a menu of agreed upon initiatives. As this effort turns toward implementation with the support of SAMHSA's GAINS Center, action planning efforts will determine how to prioritize this list of initiatives and how initiatives will be implemented.

Recommendations

The Task Force on Competency and Wellbeing developed these recommendations from September 2021 through January 2022. The Task Force divided into three working groups focused on sub-populations categorized according to severity of mental health conditions by high acuity, medium/low acuity and neurocognitive disorders. This executive summary provides an overview of these recommendations, which cover all three sub-populations.

[6] Tansey, A., Kimberly Brown and Mary Elizabeth Wood. "Characteristics and outcomes for defendants charged with misdemeanors referred for court-ordered competency evaluations." Psychological Services. March 2021

Executive Summary

Goal Statement: Individuals charged with misdemeanors, who are deemed incompetent to stand trial, have access to services that both uphold their due process and constitutional rights as well as connect them to care pathways and/or services and supports that aim to stabilize them in the community.

Strategy 1: An intentional action planning effort will engage the assistance of a third-party technical assistance provider and establish a program management structure to support data-driven selection, implementation and monitoring and reporting of new systems enhancements. These enhancements will introduce new connections to care and supports and strengthen existing connections. Data analysis will assess for disproportionate impact on people of color and provide alternatives to the justice system.

1. **Third-Party Technical Assistance for Implementation of Recommendations.** The third-party technical assistance provider will lead a process to establish strategic goals and an action plan for implementation of new options that also monitors progress of these enhancements.
2. **Program and Case Management.** Establish a mental health program manager to oversee system performance and case management portfolio in routing individuals out of the jail to treatment and/or services for stabilization.

Strategy 2: Diverting individuals to care and services at a street level event or at the point of arrest will involve the development of new skills across the Community Services Bureau at MNPD and the deployment of options to keep individuals stable in the community and out of the criminal justice system.

1. **Pre-Arrest Diversion:** Implement additional services at the crisis response level (i.e., first responders) to divert to care and/or stabilization resources in order to avoid arrest of these individuals wherever possible.
2. **Post-Arrest and Pre-Trial Response:** For individuals who cannot be diverted from arrest, new approaches, such as a specialty docket, case review team and warrant screening process, may reduce the amount of time the individual remains in jail

Strategy 3: When it is determined that misdemeanor charges cannot be diverted or dismissed, multiple options will exist to restore competency for individuals with misdemeanor offenses deemed incompetent to stand trial in order to reduce and where possible eliminate time spent in jail and prepare for referral to clinical and non-clinical services and supports at the time of discharge. The Task Force recommended funding inpatient forensic evaluation for individuals with misdemeanor offenses by the county (when psychiatric hospitalization is determined to be a necessary option) and expanding competency restoration options to include outpatient restoration and jail-based competency restoration.

Strategy 4: Discharge planning must begin at the time of admission to DCSO jail in order to ensure that individuals benefit from a timely and appropriate referral that considers the individual's previous clinical and criminal justice history. Release from jail must include robust follow-up with the discharge plan to ensure a connection of the person to the services, clinical and non-clinical, recommended in the plan.

Strategy 5: Investment in non-clinical services and housing resources will stabilize individuals in the community. The Task Force recommends specific housing programs for individuals with severe and persistent mental health conditions, who typically have complex medical conditions and co-occurring substance use disorders. It is anticipated that there will be approximately 100 individuals requiring permanent supportive housing. Investments should be made in assertive community treatment, intensive case management, tenancy support services, and critical time intervention.

1. **Fund the Low Barrier Housing Collective on an annual basis starting in FY23.** The Low Barrier Housing Collective, managed by the Metro Homeless Impact Division, began in August 2021 to recruit new low-barrier property partners.
2. **Robustly invest in the development of supportive housing specifically for multi-barrier, chronically unhoused individuals through all available means of development including acquisition, construction, low barrier units and/or master leasing.**

Introduction

In the fall of 2021, the Davidson County Task Force on Competency and Wellbeing convened to develop an initial set of recommendations that address care and supports for individuals, who are charged with misdemeanors and deemed incompetent to stand trial. At the time that the Task Force began its work, 182 individuals constituted this population.[7] This effort aims to divert and deflect these individuals from entering and re-entering the justice system or cycling through a hospital emergency room. By introducing a public health approach, the Task Force seeks to establish access to care and pathways for stability in the community. Through comprehensive referral and connections to care and supports that will aid them in managing acute and untreated mental health conditions, these individuals will achieve improved health outcomes and stability in the community. In effect, the Task Force convened to address what is now referred to as the crisis in competence to stand trial (CST).[8]

For some jurisdictions, this crisis involves lengthy jail time awaiting competency restoration services.[9] For Davidson County, this crisis can be defined as individuals cycling through the arrest process and court system for minor charges (misdemeanor offenses), which can reflect psychiatric instability. These misdemeanor offenses are subsequently dismissed by the court due to a finding of incompetence to stand trial.[10] Released from jail, the individual often re-offends (usually a misdemeanor) and begins the process again as they have not been successfully connected to care or supports that can provide them what they need to break the cycle. The cycle of arrest and adjudication erodes the possibility of improving the individual's wellbeing to ultimately remain out of the criminal justice system. Further, it creates a backlog of cases, which is costly to the county and can impede swift due process for defendants, which can become a liability for local government.

Population In Focus

Records of the 182 individuals charged with misdemeanor offenses and deemed incompetent to stand trial show:

- 53.2% are Black; 40% of the total population are Black men, nearly 1.5 times that of white men; Almost 13% are Black women, nearly 1.3 times that of white women counterparts.
- 70% Male, 22% Female, 7.7% No Record
- 50% reside in Davidson County
- 30% are experiencing homeless
- Nearly 58% are 31-64 years old; 23% are 18 – 30 years old
- Charges: Criminal trespass, assaults, resisting arrest, and disorderly conduct are most frequently incurred.

A recent article authored by members of the Vanderbilt Forensic Evaluation team also sheds light on the profile of individuals charged with misdemeanors who are deemed incompetent in Nashville/ Davidson County:

Age: Average = 36.5 years (ranged from 18-75)

Gender:79% male, 21% female

Race: 56% Black, 34% White, 9% other
Diagnosis:

- 71% had primary diagnosis with psychotic symptoms
- 42% primary psychotic disorder (e.g., Schizophrenia, Delusional Disorder)
- 21% mixed psychotic + mood disorder (e.g., Bipolar Disorder with Psychotic Features, Schizoaffective Disorder)
- 18% had primary diagnosis with cognitive deficits (e.g., neurocognitive disorder, intellectual disability)
- 75% also had substance abuse diagnosis

[7] Davidson County Criminal Justice Information System. This population reflects individuals with misdemeanor only offenses who have received at least one forensic evaluation conducted by the Vanderbilt Forensic Evaluation Team between October 2017 and June 16, 2021.

[8] Just and Well: Rethinking How States Approach Competency to Stand Trial. CSG Justice Center; American Psychiatric Association Foundation, et.al. October 2020.

[9] Authorized by state law and typically funded under the state mental health authority, these services seek to return an individual to the court system as competent for adjudication. This means that the individual has a factual and rational understanding of their legal situation and the rational ability to assist in their defense. Restoration services can include medication and educational therapeutic, and recreational services. Competency restoration services have been designed specifically to return an individual to the court system and not for sustained recovery and management of a mental health condition.

[10] T.C.A § Chapter 33 – 7 – 301 (a) 4a: "…a defendant is incompetent to assist counsel in preparation for, or otherwise participate in, the post-conviction proceeding, the court may, upon its own motion, order that the defendant be evaluated on either an outpatient or inpatient basis…"

Barriers to Competency & Wellbeing[11]

The Task Force identified several barriers that stand in the way of this population to establish competency and wellbeing. Some of these barriers relate directly to how competency restoration is authorized by law in Tennessee and funded. Other barriers reflect how the legal system itself does not support the creation of intentional referral to care. Task Force members also noted that, while there are some essential supports in place - mental health treatment in the county jail or at the Behavioral Care Center, or the development of outpatient care plans, for example - these resources do not provide comprehensive linkage to other consequential forms of care or supports that might improve an individual's long-term stability or wellbeing in the community.

This population – individuals charged with misdemeanors who are deemed incompetent - does not currently have consistent access to competency restoration resources or to support services in Davidson County, TN. These individuals typically do not receive inpatient forensic evaluation at Middle Tennessee Mental Health Institute since, as of this writing, full funding for such a hospitalization has yet to be provided. Outpatient restoration services are rarely offered.

Currently, minimal discharge planning occurs at case dismissal. The case dismissal and nolle'd process does not currently include linking the defendant to other clinical and non-clinical services and supports to stabilize them in the community in order to divert them from returning to the criminal justice system. For example, the court clerk can request a mobile crisis screening only if the individual may meet commitment criteria, such as being a danger to self or others or unable to care for themselves without risk of harm. When individuals have been released with an outpatient care plan, compliance is often poor, due to the severity of the illness and limited insight. While the Davidson County Jail houses the Behavioral Care Center, services currently only support individuals who are willing to complete the program, those who are competent to stand trial, and/or those who are psychiatrically stable enough to participate in treatment.

Task Force members found that these barriers, taken together, contribute to a high rate of reincarceration among this population of defendants: 60% of the current population is anticipated to be re-arrested within 90 days and experiences arrest at more than twice the rate of individuals who are competent to stand trial.[12] The average wait time for a 30-day evaluation at MTMHI is 60 days, though at times has been as high as 90 days. Without additional options for restoration and connection to care and services, these individuals cycle through the adjudication process and criminal justice system.

[11] Task Force working groups met from October – January 2022 to identify initial barriers to competency and wellbeing and developed recommendations based on those barriers.

[12] Tansey, A., Kimberly Brown and Mary Elizabeth Wood. "Characteristics and outcomes for defendants charged with misdemeanors referred for court-ordered competency evaluations." Psychological Services. March 2021

Utilization of First Responder Resources and Hospitals

An initial analysis conducted by the Metropolitan Public Health Department[13] revealed that nearly 30% (or 53) of the 182 individuals had been served by other first responder resources, often on multiple occasions across several years. Of 182 total individuals charged with misdemeanor offenses deemed incompetent to stand trial:

- 7 (3.8% of total population) experienced an event served by Partners in Care[14] in Quarter 1 or 2 of the pilot year, FY22;
- 27 (14.8% of total population) had at least one suspected psychiatric EMS event during calendar year 2021;
- 34 (18.7% of total population) were identified as chronic consumers arrested since 2013 by MNPD with a cumulative total of 840 arrests (mean: 24.7; range: of 52; median: 20.5);
- 129 (70.9% of total population) were unmatched.

Examining hospital utilization of this population over a three-year period (2017 – 2019)[15] found matches for 124 individuals of the original 182. During this period, claims reflected 1,434 days in an emergency department, or nearly four days per person per year. Inpatient days averaged nearly three days per person over the three-year period. Seventy individuals qualified as uninsured at some point during this period.

These individuals continue to cycle through the criminal justice system, first responder resources and hospitals without receiving the care and support that they require to stabilize in the community. Additional analysis of this population shows that this population experiences complex conditions and can be characterized as multi-barriered: Thirty percent experience homelessness, over 70% have a primary diagnosis with psychotic symptoms, 75% have a co-occurring diagnosis of addiction, and nearly 60% of the population is between the ages of 31 and 64.

[13] Metropolitan Public Health Department, retrieved by email on March 3, 2022. These statistics are not mutually exclusive as one consumer could have interactions with more than one intervention/category. Matches were made by a combination of name and date of birth. Where any portion of this information was unavailable, matches were not made. This information is not meant to be fully representative or exhaustive as collection methods are not uniform or required for many of the comparison records of interest.

[14] Partners in Care launched on June 28, 2021 specifically to address mental health crisis by means of a police co-response model, which pairs a clinician with an officer. During the pilot year (FY22), services are provided in two of eight precincts in Nashville/Davidson County.

[15] Analysis conducted by the Tennessee Hospital Association. Retrieved March 10, 2022.

Recommendations

These recommendations reflect programs and systems enhancements that can set individuals on a path to care and/or stability in the community. All recommendations that are listed have been reviewed in relation to an individual's constitutional and due process rights. These recommendations also seek to introduce clinical resources to restore competency when diversion is not an option, and to connect individuals to mental health care where possible and applicable, as well as introduce non-clinical services and supports to aid in stabilizing individuals who cannot benefit from such services or who decline these services.

These recommendations meet specific principles in terms of due process and connection to care and non-clinical support services. Implementation of any of these recommendations by themselves or in concert will require a planning process involving many of the original study group members and a community engagement process to ensure that lived experience and the experience of communities of color are represented in decision-making moving forward. This process will need to be rooted in data analysis to support the selection of enhancements that can successfully divert individuals with mental health conditions away from the criminal justice system.

Importantly, data analysis will aid in identifying the causes of disproportionate impact on people of color, and specifically Black men. While the data available so far has produced a general profile in question, multivariate analysis cannot be performed on the data shared with this effort, the Task Force on Competency and Wellbeing. These data do provide a baseline for the next phase of work, which includes pursuing changes through the Learning Collaborative hosted by SAMHSA GAINS Center. Applying the Sequential Intercept Model will also aid in identifying points of diversion and provide direction on where connections to care and non-clinical supports must exist or be reinforced.

Goal Statement[16]

Individuals charged with misdemeanors, who are deemed incompetent to stand trial, have access to services that both uphold their due process and constitutional rights as well as connect them to care pathways and/or services and supports that aim to stabilize them in the community. These individuals can access services quickly for clinical support and begin a care pathway for disease management. Individuals who are permanently unrestorable to competency, due to an IDD or neurocognitive diagnosis, would not benefit from competency restoration and are connected to specific resources for care and stability. For individuals who exercise the right to decline clinical services, non-clinical services and supports can provide them the care they need to stabilize in the community.

Consistent with emerging national practice, forensic mental health resources are used to develop a comprehensive treatment plan for individuals charged with misdemeanors to support public safety and enhance individual wellbeing. To the extent possible and appropriate, individuals are diverted from the criminal justice system both pre-arrest and post-arrest. Jail-based and outpatient competency

[16] This goal statement focuses on a specific population for whom access to the Behavioral Care Center at the Davidson County Sheriff's Office is not an option since competency restoration involves a court order. Currently, admission to the BCC is voluntary in nature to individuals with low to moderate acuity. However, during the study process, working groups discussed at length how the BCC might be a resource for individuals deemed incompetent with misdemeanor charges. One recommendation regarding the BCC current services has relevancy for its current population: Enhance the level of addiction services at the BCC as part of mental health services to include detox and Medically Assisted Treatment.

restoration programs prove to be adequate alternatives for some individuals with severe and persistent mental health conditions.

Strategy 1: An intentional action planning effort will engage the assistance of a third-party technical assistance provider and establish a program management structure to support data-driven selection, implementation and monitoring and reporting of new systems enhancements. These enhancements will seek to introduce new connections to care and supports or strengthen existing connections. Data analysis will assess for disproportionate impact on people of color and provide alternatives to the justice system.

3. **Third-Party Technical Assistance for Implementation of Recommendations.** The third-party technical assistance provider will lead a process to establish strategic goals and an action plan for implementation of new options that also monitors progress of these enhancements. Sequential Intercept Model mapping must be utilized to understand the point of deflection to care and services. Also, the implementation process will include a legal review of all options selected for the action plan to uphold due process and constitutional rights of all individuals contemplated.

4. **Program and Case Management.**
    a. Establish a mental health program manager to oversee system performance and case management portfolio in routing individuals out of the jail to treatment and/or services for stabilization.
    b. Ensure that MPHD can provide data analytics on population health and track the performance of new systems enhancements in relation to population outcomes.
    c. Establish quality assurance across all participating departments and agencies through the coordination of data by MPHD

One position will oversee all cases involving individuals with misdemeanor charges deemed incompetent in order to pair individuals with clinical and non-clinical pathways during and after the adjudication process

- $100,000 to establish a program manager

Strategy 2: Diverting individuals to care and services at a street level event or at the point of arrest will involve the development of new skills across the Community Services Bureau at MNPD and the deployment of options to keep individuals stable in the community and out of the criminal justice system.

1. **Pre-Arrest Diversion:** Implement additional services at the crisis response level (i.e., first responders) to divert to care and/or stabilization resources in order to avoid arrest of these individuals wherever possible.

    a. **Diversion at street level event and/or point of arrest.** MNPD patrol officers and co-response teams (e.g. Partners in Care) access available data.
    b. **Train all officers and front-line supervisors in the Community Services Bureau in Crisis Intervention Teams** in order to develop skills related to de-escalation in the context of an individual with a behavioral health condition and improve detection of symptoms associated with a condition for the purpose of exercising officer discretion at the point of arrest. For those who qualify, these individuals can be diverted to the 24/7 Crisis Treatment Center to be screened for admission and supported through connection to other appropriate services.

c. **If individual is known to have IDD/neurocognitive disorders, engaging condition specific resources at the point of the event**, for example at a group home, or at the CTC, or potentially along with the Partners in Care (PIC) to facilitate pre-arrest diversion.
d. **Respite Care.** Seeking a respite bed is one option for individuals who voluntarily agree to placement outside of their residential setting, which would allow for a brief (3-4 day) stay elsewhere to allow for time away from the point of aggravation. (As of the publication of these recommendations, the CTC is the only place for respite care today. In the future other non-clinical forms of respite care might be available.)
e. **Community-based programs.** If investments are made in Davidson County in Intensive Case Management and Assertive Community Treatment, other programs may be available to provide diversionary support. (See page 11.)
g. **Assisted outpatient treatment** – AOT can provide a treatment alternative for some individuals. Due to shortened hospital stays many individuals who could benefit from AOT do not meet criteria as they are released before the judicial commitment process (day 15). Revising criteria for consideration of AOT should be considered for individuals who have a history of arrest but deemed not competent. To accomplish this:
    - Enact AOT statutes or Assisted Outpatient Treatment (AOT)[17] to allow courts to order outpatient treatment without having to be hospitalized first.

Current law[18] can be utilized to support Mandatory Outpatient Treatment or AOT in the following ways:

1. **Conditions to establish Assisted Outpatient Treatment (AOT)**
    a. Suspend criminal charges to place individual on a court ordered Assisted Outpatient Treatment (AOT)
    b. Establish AOT for individuals who meet the following criteria
        i. At least 18 years of age
        ii. Determined to be suffering from a mental illness
        iii. Has a history of lack of compliance with outpatient treatment
        iv. Has history of repeated involuntary psychiatric hospitalizations in the last 2 years AND/OR history of multiple arrests and incarcerations that have resulted in need for competency determination AND/OR on-going mental health treatment while incarcerated.

[17] Revisions to MOT may carry a fiscal note to indicate the cost of program changes.
[18] The MOT Manual and an Annual Report on MOT services are posted at: https://www.tn.gov/behavioral-health/mhsa-law/forensic-juvenile.html

2. **Specific Treatment Needs.** The AOT order would be individualized to address the specific treatment needs of the individual.

    a. AOT treatment recommendations may include any of the following— Cooperation with care management, therapy, medication evaluation and adherence to medication if recommended by treating prescriber. If the treatment team recommends supervised housing and this level of housing is available this would be incorporated into the order.

3. **AOT Review Process & Due Process Rights.** The AOT order/treatment plan would be reviewed every 6 months. During the review process the treatment team must provide an update to the individual and the Court regarding the individual's progress and make recommendation as to the need for continuation or termination of the AOT obligation. The determination to continue the AOT must be based on the need for on-going treatment, the individual's likelihood to discontinue treatment if not under Court order obligation to do so, and likelihood that the individual's mental health condition would deteriorate significantly to the point that they may present a risk in the community. The individual's due process and constitutional rights will follow current State law on legal representation and the ability to appeal the process. [A State statute change will be required to create an outpatient civil commitment option.]

4. **Failure to Comply.** Failure to comply with the AOT order
    a. If the licensed mental health professional coordinating the individual's AOT treatment plan determines based on their clinical judgement that the individual has failed to comply with treatment ordered by the court, the licensed mental health professional shall notify the court of jurisdiction and request immediate review.
    b. If during Court review it is determined that the individual is out of compliance without good cause the individual will be transported to a local psychiatric facility for further evaluation and treatment.
    c. If the Court determines that the individual is out of compliance with good cause and the individual is likely be get back into compliance immediately then the Court will make any revisions needed in current AOT order and individual will remain in community.

2. Post-Arrest and Pre-Trial Response: For individuals who cannot be diverted from arrest, the following options may serve to intervene to reduce the amount of time the individual remains in jail while awaiting adjudication of the charges or post-arrest diversion.

a. **Case Review Team.** Develop a Case Review Team, which can meet regularly to review each case, the services in place, identify gaps in delivery, and implement further supports, as needed.

   i. Minimum set of participating organizations will include:
      1. Outpatient Mental Health Agencies (i.e., case/medication management)
      2. Forensic Evaluation Team
      3. Department of Intellectual and Developmental Disabilities (DIDD)
      4. Advocate (e.g., ARC, Tennessee Disability Rights)
      5. Housing Resources
      6. Disability Resources, and
      7. Conservatorship Resource Supports

   ii. Once referred to the Case Review Team, the process of discharge planning would begin, with the goal of safely transitioning out of custody as soon as possible.

b. **Specialty Docket**. Create a Specialty Docket**,** to be staffed and overseen by the mental health and/or veterans court judge of General Sessions Division II, which would be convened almost immediately following arrest.

c. Warrant screening process. Office of the District Attorney General can identify cases involving new charges in which prosecution may be inappropriate (e.g., caregiver warrants). On existing warrants and cases involving probation, the judge and/or the night court administrator/commissioner may invite the District Attorney General to determine whether charges require prosecution.

Strategy 3: Multiple options will exist to restore competency for individuals with misdemeanor offenses initially deemed incompetent to stand trial in order to reduce and where possible eliminate time spent in jail and prepare for referral to clinical and non-clinical services and supports at the time of discharge. T.C.A § 33-7-301 stipulates that outpatient forensic evaluations and inpatient forensic evaluations are permitted under law. T.C.A § 33-7-401 authorizes the court to order mandatory community-based treatment for a defendant found incompetent to stand trial, but the law is restricted to defendants charged with a felony.

- $353,000 recommended for forensic evaluations in Davidson County covering individuals with misdemeanor charges to determine competency. This recommended budget covers the outpatient forensic evaluations for 87 individuals annually and inpatient forensic evaluation for approximately one-quarter of these individuals.[19]
- $125,000 for clinical program manager to oversee a pilot project in FY23 that introduces jail-based competency restoration program.[20]

[19] Based on 5-year trends, Davidson County courts will order approximately 87 individuals charged with misdemeanors annually to receive competency evaluations. Twenty-one individuals will likely need inpatient 30-day further evaluations and require approximately a 26-day stay. Retrieved by email on January 18, 2022 from Tennessee Department of Mental Health and Substance Abuse Services.

[20] A masters-level clinician with training in restoration services and experience in managing care for justice-involved populations will be required.

1. **Outpatient forensic evaluation at DCSO.** Davidson County will recommend an annual budgeted amount to cover the cost of the initial forensic evaluation for individuals with misdemeanor charges for whom there are concerns regarding their competency to proceed in their case due to mental health conditions.
2. **Inpatient forensic evaluation.** Davidson County will recommend an annual budgeted amount to fund inpatient forensic evaluations for individuals who are found incompetent after the outpatient evaluation and who have only misdemeanor charges.

3. **Jail-Based Competency Restoration Program**. Establish a jail-based competency restoration program at DCSO, which would serve individuals determined to be incompetent though not as acute as requiring inpatient hospitalization. Medication management can be incentivized, though not required. This is a mandatory court order as a result of a forensic evaluation that would also include time limits for restoration.

4. **Outpatient Restoration Program.** An outpatient restoration program for individuals that do not need the level of care that a jail-based or hospital program provide. This program is time-limited not to exceed 60 days where the individual adheres with medication and meets with a provider weekly for restoration sessions. [This will require state law change in order to uphold an individual's due process rights in relation to how long an individual can remain in outpatient restoration.]

Strategy 4: Discharge planning must begin at the time of admission to DCSO jail in order to ensure that individuals benefit from a timely and appropriate referral that considers the individual's previous clinical and criminal justice history, as well as the natural supports available to them.

1. **Discharge Planning.** Discharge planning should begin at the time of admission and continue during the length of stay in treatment. Most of these individuals return frequently to the jail with new charges. Staff hired into positions providing discharge planning need to understand that this is a long-term commitment to working with these individuals in the court in order to stabilize them outside of the criminal justice system.
    - Communication and participation with natural supports (recognizing that many individuals are estranged from possible support it would be necessary to further explore restoration of relationships with family members, etc.)
    - Consistent communication with social workers/service providers during the stay to develop or communicate plans. Often discharge planners do not communicate until the plan is put into motion leaving little time for service providers to participate in engagement, handoffs w/ housing, or transportation to next place of stay.

2. **Transportation Services.** Transportation should be arranged prior to discharge. To the extent possible, transportation should be provided by the court's vehicle. Taxis, payor transportation, Uber, or public transit often do not result in the consumer getting from "Point A to designated d/c location".
    - Service providers, family members, group home staff or trusted supports are ideal to provide transport. A "warm handoff" back into the community with a person of rapport would increase the likelihood of a successful "landing" to the identified discharge location.

Strategy 5: Investment in community-based services and housing resources will stabilize individuals in the community.

The Task Force on Competency and Wellbeing recommends specific housing programs for individuals with severe and chronic mental health conditions, who typically have complex medical conditions and co-occurring addiction disorders. It is anticipated that there will be approximately 100 individuals requiring permanent supportive housing. There are several housing programs that are suited to this population to ensure stability and wellbeing.

Below are estimated program costs based on 100 individuals for 1 year. These costs fund supportive services and do not include additional housing costs.

- $1.3 million Assertive Community Treatment: A housing-first model of care that provides specific case management for populations with complex medical conditions and severe and persistent mental health conditions
- $1.1 million Intensive Case Management: Focused, wrap-around services for a high-need population
- $850,000 Tenancy Support Services: On-site services to support individuals living in supportive housing units
- $660,000 Critical Time Intervention: Provides immediate support at moments of crisis for individuals living in supportive housing

3. **Fund the Low Barrier Housing Collective on an annual basis starting in FY23**
   The Low Barrier Housing Collective, managed by Metro Homeless Impact Division, began in August 2021 to recruit new low-barrier property partners. Between August and November 2021, 29 new property partners joined existing participants, increasing options by 33% with an additional 3,811 units (some currently leased up). This initiative provides a "One Stop Shop" for landlords by bundling the existing incentives in the community into an easy-to-understand membership model. In addition, it promotes collaboration and prevents duplication by service providers. Service providers have access to an inventory of 13,000 units with regular availability updates, barrier information, and subsidies accepted, promoting strategic housing search.

FY23 Request: $958,000 annual budget

This budget includes three FTEs with benefits at $198,000. In addition, program costs include a landlord sign-on incentives of $500,000 and an arrears fund of $250,000. Additional leveraged funds that are not part of this request include $50,000 website development through ESG and a mitigation fund of $250,000 support through the United Way/Frist Foundation.

4. **Robustly invest in the development of supportive housing specifically for multi-barrier, chronically unhoused individuals through all available means of development including acquisition, construction, low barrier units and/or master leasing.**

   Develop supportive housing units specifically for individuals with severe and persistent mental health conditions, addictions, chronically unhoused and complex medical conditions. Promote and leverage successful local and national models of making low barrier housing available to this population.

Methodology

The Task Force on Competency and Wellbeing convened to address one core planning question: What practices, procedures, policies, and programs can set individuals on the path to competency and wellbeing? The Task Force objective sought to: develop a sustainable role for Metro Nashville to fund evidenced-based services and/or supports to set individuals, who have been charged with misdemeanors and deemed incompetent to stand trial, on a path to competency and wellbeing.

In order to accomplish this task, the Task Force convened as a committee of the whole on several occasions: at the launch of the work to define the scope and provide a fundamental overview of the population in question; and, at the end, to review all recommendations. The majority of the work of the Task Force took place in three working groups established to focus on specific subcategories of the population in question: high acuity; moderate/low acuity; and, individuals with developmental disabilities and/or neurocognitive disorders, who are permanently unrestorable to competency. The forensic team at Vanderbilt University Medical Center assisted in the development of these classifications so that members could address and introduce steps to care pathways that support these distinct categories.

The group decision making process incorporated an approach based on Results-Based Accountability™, which incorporates a data-driven, decision-making process to create feasible next steps. Working groups came to the conclusion that the change management process moving forward should, in part, focus on reducing and potentially eliminating the degree to which this population is re-arrested: 60% of the current population is anticipated to be re-arrested within 90 days and experiences arrest at more than twice the rate of individuals who are competent to stand trial.

The Task Force identified several principles to guide work during this process: People-centered, health equity, cross-sector, and data-driven and evidenced-based. During the formulation of recommendations, additional principles emerged, specifically: due process and constitutional rights, as well as connections to care. The administrative data available during this process was not robust enough to address questions of health equity or to align recommendations to the demand for services since data could not be disaggregated beyond demographics, diagnosis, and offense type.

The recommendations developed by the Task Force represent a menu of agreed upon initiatives. As this effort turns toward implementation with the support of SAMHSA's GAINS Center, action planning efforts will determine how to prioritize this list of initiatives and how initiatives will be implemented.

APPENDIX A: Additional Data Collection and Analysis

Throughout the proceedings of the Task Force on Competency and Wellbeing, members identified additional data that could inform points of diversion and deflection as well as Sequential Intercept Modeling. More robust data will aid efforts to dismantle existing processes that potentially contribute to disproportionate impact on people of color and offer alternatives to the justice system in the form of access to care and supports.

The list below captures data that were unavailable during the Task Force proceedings:

- Multivariate analysis of individuals in order to forecast demand for new enhancements or services
- Resource mapping to understand which current resources are available to this population and where the gaps are
- Hospital and emergency room utilization (secured in time for the development of the report)
- Geospatial analysis of arrest location and frequency of arrest in same locations
- Knowledge of the pattern of offenses (trespassing, assault, etc.) would aid in the planning for discharge and inform the process to invest in enhancements:
    - For example, the offense can be used to identify a specific need that the individual is pursuing (i.e. a place to rest, money, being heard) and can lead to customized interventions (i.e. housing, assistance with employment, therapy).
    - Decisions regarding where to invest in resources can be informed, in part, by understanding the individual's needs and the interventions to address those needs.
- Assessing individual "wants and desires" will help to determine what motivates the individual. Motivations can be translated into incentive/rewards for completion of tasks/programs, etc. and can help individuals stay engaged and "feel the win" for accomplishing steps needed for a successful discharge and referral to new services.
- Identifying available resources given an individual's requirements. Certain individuals may have limitations in housing or support due to lack of resources in the following areas
    - Medically fragile individuals – often not eligible for nursing facilities and cannot stay at the shelters due to inability to care for themselves physically.
    - Developmental disabilities – requires a different type of structured residential housing options and/or increased supports to live independently.
    - Arson/Sex Offenses – options are few.

Davidson County Task Force on Competency and Wellbeing

The Task Force on Competency and Wellbeing engaged elected officials and providers directly involved in the competency restoration process. Judge Melissa Blackburn and her colleagues, District Attorney General Glenn Funk, Public Defender Martesha Johnson, and Sheriff Daron Hall initiated the effort and included the Mayor's Office. Participants hailed from the following departments and agencies:

- General Sessions Court, Division 2 Mental Health and Veterans Court
- Davidson County District Attorney General
- Davidson County Public Defender
- Davidson County Sheriff's Office
- Nashville/Davidson County Office of the Mayor
- Metro Public Health Department
- Metro Nashville Police Department
- Mayor's Behavioral Health and Wellness Advisory Council
- Tennessee Department of Mental Health and Substance Abuse Services
- Centerstone, Inc.
- Mental Health Cooperative, Inc
- Park Center
- Vanderbilt University Medical Center – Forensic Evaluation Team

Discussions also involved the Tennessee Department of Intellectual and Developmental Disabilities and the ARC Tennessee on individuals whose competency was non-restorable due to neurocognitive disorder or intellectual and developmental disabilities (IDD). Finally, several members of the Task Force attended the Summit on Competency Restoration hosted by the SAMHSA's GAINS Center for Behavioral Health and Justice Transformation on December 13, 2021.