

In recent years, there has been a dramatic increase in the number of nonviolent defendants found to require competency restoration. This has led to more and more state psychiatric beds set aside to serve this population and ever fewer beds available for those in psychiatric crisis who are not criminally involved.¹

The percentage of admissions in which the patient was criminally involved at all state hospitals increased from **7.6% in 1983** to **36% in 2012** and to approximately **58% in 2014**. Competency restoration cases make up the largest proportion of forensic patients.²

There are many potential approaches to reversing this worrying trend, and states and jurisdictions must be open to embracing a number of strategies simultaneously. One approach to consider is assisted outpatient treatment (AOT). AOT is a civil court procedure that helps ensure a person with severe mental illness receives treatment while being monitored in the community.

“Dismiss upon civil commitment with AOT” is a term used when referring to post arrest diversion to AOT. It is a tool in the toolbox for addressing a segment of the ever-growing forensic population — those offenders with SMI who have a history of criminal legal involvement due to their lack of engagement in treatment, but who do not present a public safety risk. Efforts to restore these individuals in the past have been unsuccessful, so typically either their cases are dismissed, and they return to the community only to reoffend, or their charges are elevated to a more serious offense in the belief that they will receive needed treatment in jail or prison. **Dismiss upon civil commitment with AOT** is the practice by which criminal charges are dismissed prior to a competency determination or in lieu of competency restoration and held in abeyance while an application for civil commitment is filed in civil court. Once a civil commitment order has been issued, the individual is released to an AOT program for community treatment and monitoring, usually after a short period in the hospital for stabilization.

The advantage of this approach, is that it provides connection for the person with treatment providers in the community, for far longer than just “restoration to competence” and provides for a much higher level of adherence to treatment in the long term, and lower likelihood of cycling through the harmful and costly revolving doors of homelessness, hospitalizations and incarceration.

We encourage states to invest in services and programs that have been found to be most effective in providing treatment to people with the most severe mental illnesses like AOT, ACT Teams, Case Managers for intensive case management.

In addition, supporting the active collaborations, coordination and education of those involved in the criminal legal system such as judges, prosecutors, and public defenders to work with the local mental health authorities and providers to divert as many people as possible and appropriate for AOT will both help to provide more effective treatment for those already intersecting with the criminal legal system and improve the long term outcomes for them, while also improving public safety.

AOT has been shown to be highly cost effective (reducing costs by 40-50%) and providing treatment also reduces risk of lawsuits for violating the constitutional rights of pretrial defendants, thus saving states millions of dollars in penalties.³

Taking this approach and funding it proves to not only be cost effective, but reduces the strains on the state psychiatric hospitals, jails and criminal legal system, but is also the moral thing to do. Providing medically necessary treatment instead of punishment protects their human rights for sanity and to live more healthfully and helps everyone in our society.

¹Fuller, D. A., Sinclair, E. A., Geller, J., Quanbeck, C., & Snook, J. (2016). Going, going, gone: Trends and consequences of eliminating state hospital beds. Treatment Advocacy Center. https://www.treatmentadvocacycenter.org/reports_publications/going-going-gone-trends-and-consequences-of-eliminating-state-psychiatric-beds/

²Wik, A., Hollen, V., & Fisher, W. H. (2017). Forensic Patients in state psychiatric hospitals: 1999–2016. National Association of State Mental Health Program Directors.

³ Kois et al. A public health perspective; Douglas, A. (2019). Caging the incompetent: Why jail-based competency restoration programs violate the Americans with Disabilities Act under *Olmstead v. L.C.* Georgetown Journal of Legal Ethics, 32, 525–575. <https://www.law.georgetown.edu/legal-ethics-journal/wp-content/uploads/sites/24/2019/10/GT-GJLE190027.pdf>; Fuller et al. Emptying the ‘new asylums.’

For more extensive information, please refer to this document:

[Competency Restoration and AOT Handbook TAC Final Copy.pdf](#)