

A black and white photograph of several classical columns, likely from a government building or courthouse. The columns are fluted and have papyrus capitals. The lighting creates strong shadows and highlights, emphasizing the texture and depth of the stone. A dark, semi-transparent rectangular box is overlaid on the lower half of the image, containing the title and presenter information.

COMPETENCY TO PROCEED IN COLORADO AND BEYOND

Presented to the BHDCJS Legislative Oversight Committee
W. Neil Gowensmith, Ph.D. and Daniel C. Murrie, Ph.D.

INTRODUCTIONS



Groundswell Services, Inc.

Neil Gowensmith, Ph.D.

Licensed clinical psychologist specializing in forensic psychology

Postdoctoral fellowship in forensic psychology, St Elizabeth's Hospital, Wash DC

Former Chief of Forensic Services, Hawaii

Former CDHS competency evaluator

Associate Professor, University of Denver

President, Groundswell Services, Inc.

Daniel Murrie, Ph.D.

Licensed clinical psychologist specializing in forensic psychology

Director of Psychology,
Institute of Law, Psychiatry & Public Policy
(University of Virginia)

Professor of Psychiatry,
(University of Virginia Medical School)

Groundswell Services, Inc.
& other national consulting

ROLE AND OBLIGATIONS AS SPECIAL MASTERS

Court-appointed position to provide recommendation and oversight related to Case 1:11-cv-02285.

Duties outlined in the consent decree:

- Review and approve the Department's plans to improve timeliness of performance of competence services.
- Recommend methods for addressing short- and long-term compliance with the timeframes for Competence Services ...and compliance with the Consent Decree.
- Monitor progress regarding compliance with the Consent Decree and relevant state laws
- Participate in the Fines Committee, which receives funds from fines for non-compliance and determines best use of those funds to further alleviate the competence waitlist





Consultation

The diagram features a central equation: 'Consultation' in a blue circle plus 'Collaboration' in a blue circle equals 'Advisory Role' in a larger blue circle. The background is a soft-focus image of hands holding interlocking gears. A thin vertical blue line is on the left side.



Collaboration

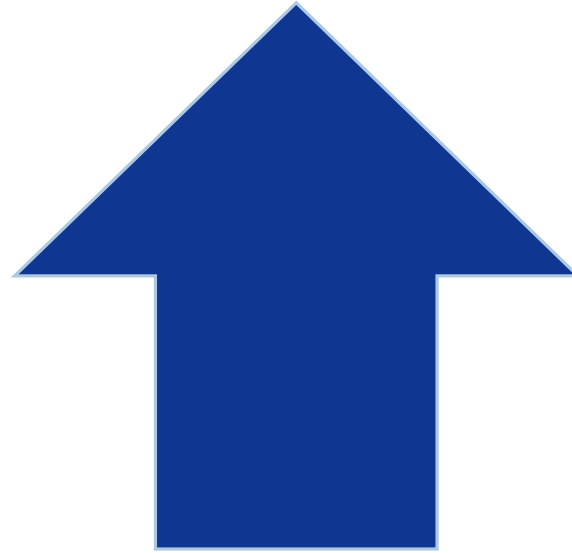
Advisory Role



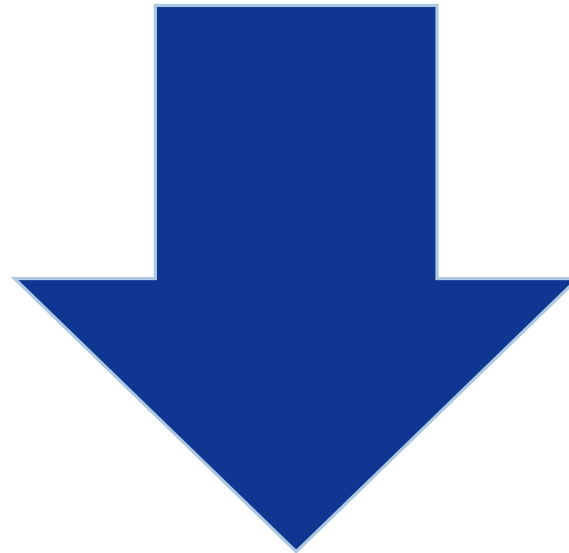
THE NATIONAL “COMPETENCE CRISIS”



**DEMAND
INCREASES
WHILE
SUPPLY
DECREASES**



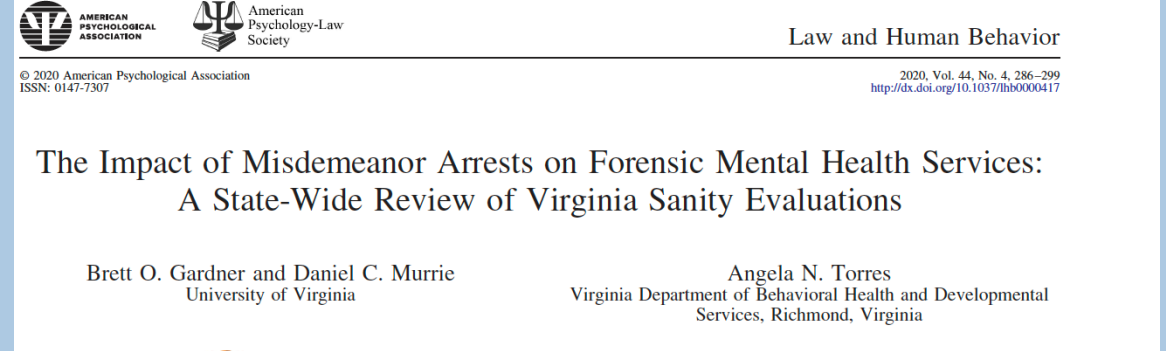
1. Number of people ordered to competence evaluation
2. Proportion of persons found incompetent to proceed (ITP)
3. Number of people ordered to competence restoration



1. Number of inpatient restoration beds
2. Mental health staffing availability



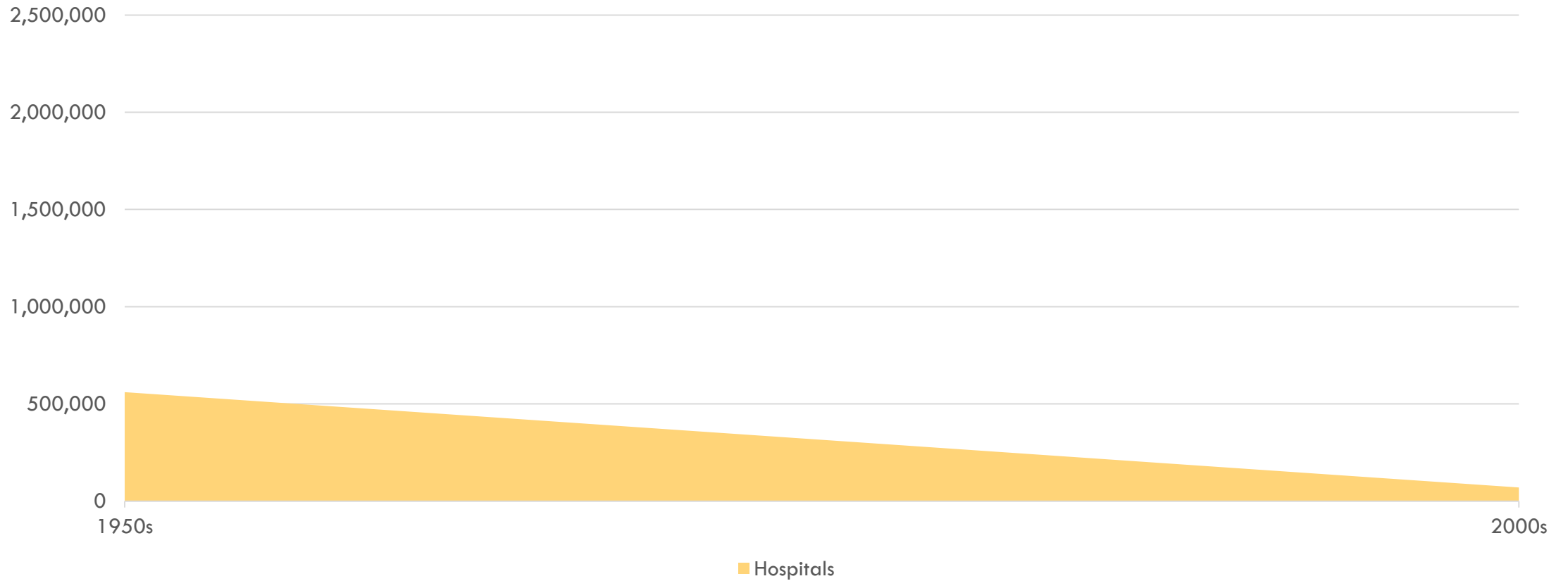
THE ROLE OF MISDEMEANANTS



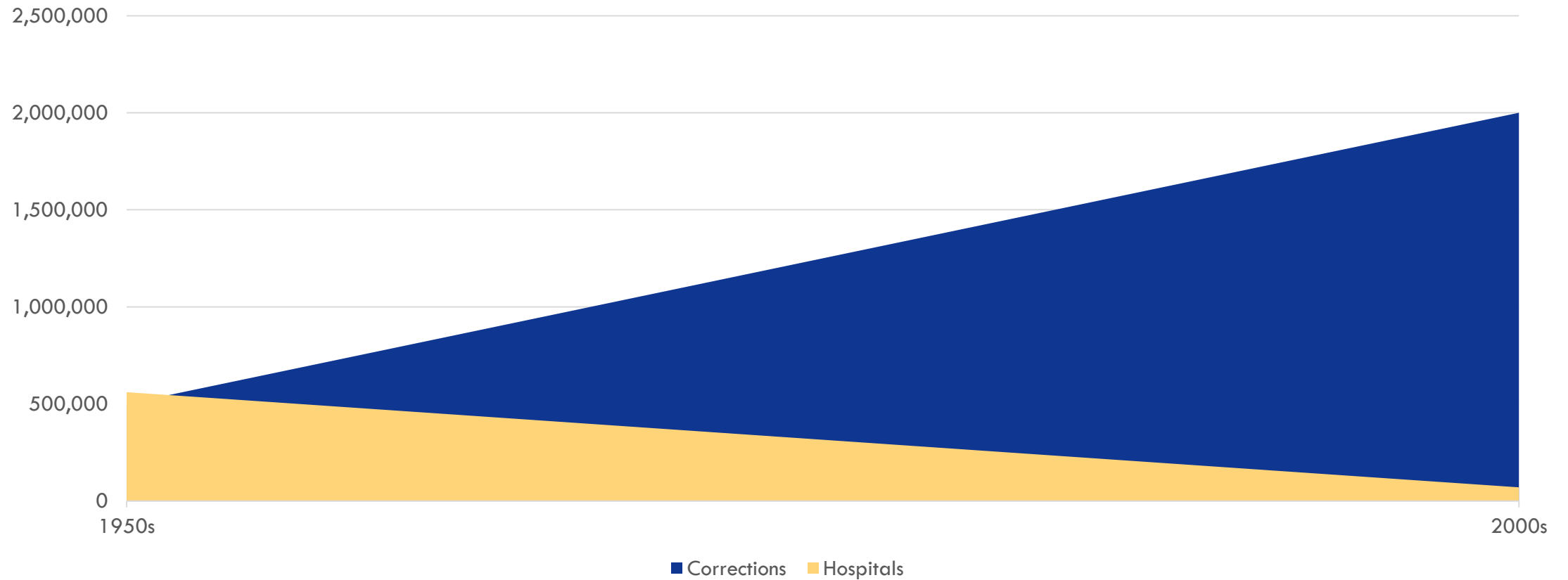
- Misdemeanants more often opined ITP (44%) than felons (31%)
- Largely due to more psychosis
- More misdemeanants ordered to restoration than ever before



US STATE HOSPITAL POPULATION FROM 1950-PRESENT



STATE HOSPITAL VS. JAILS / PRISON POPULATIONS FROM 1950-PRESENT







Pa.'s mentally ill inmates trapped in legal purgatory



Gallery: Dauphin County Prison 'We are the state hospital'

PENNLIVE ON

MOST READ

Long, Dangerous Wait for Hospital Beds for Those Incompetent to Stand Trial



By **Scott Shafer**
OCTOBER 20, 2015



In 2010, Rodney Bock was arrested for carrying a loaded gun into a restaurant in Yuba City, north of Sacramento. Bock had severe mental illness and was later found incompetent to stand trial. He was released

SICK Pennsylvania's Mentally Ill Spend Years in Jail Without Trial or Treatment

Without enough beds in mental facilities, Pennsylvania is forcing the 'mentally unfit' to stay locked up. One has become borderline catatonic waiting for help.

No place to go: Inmates declared mentally unfit to stand trial languish in jails

BY CHRIS MCGUINNESS

It was 5:36 p.m. on Jan. 22, 2017, and Andrew Chaylon Holland was dead.

An official report details the bleak tableau that greeted a coroner's office investigator at the scene of the 36-year-old Atascadero resident's death: Holland was naked and his legs were in shackles. His body lay supine on the floor of an observation cell at the SLO County Jail. Adhesive pads from a portable defibrillator —evidence of the jail staff's efforts to revive him—were still on his chest.

Holland died less than an hour after **spending nearly two days in a restraint chair**, where he'd been placed for his own safety after the jail's correctional deputies saw him attempting to harm himself. According to the coroner's report, Holland was in the chair from 6:55 p.m. on Jan. 20 until 4:43 p.m. on Jan. 22. During that time, he'd refused food and water. Soon after he was released from the chair, a video feed from the observation cell showed Holland lying on his back. By 5:02 p.m., he appeared to have trouble breathing. By 5:08 p.m., Holland appeared to have stopped moving, the report states.

An autopsy later determined that Holland's death was caused by a blood clot in one of his lungs. According to the National Institute of Health,



click to enlarge

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

DEMONTRAY HUNTER, by and through his next friend, Rena Hunter; RUSSELL D. SENN, by and through his next friend, Irene Senn; TRAVIS S. PARKS, by and through his next friend, Catherine Young; VANDARIUS S. DARNELL, by and through his next friend, Bambi Darnell; FRANK WHITE, JR., by and through his next friend, Linda White; MARCUS JACKSON, by and through his next friend Michael P. Hanle; TIMOTHY D. MOUNT, by and through his next friend, Dorothy Sullivan; HENRY P. MCGHEE, by and through his next friend, Barbara Hardy, individually and on behalf of all others similarly situated; and the ALABAMA DISABILITIES ADVOCACY PROGRAM,

Plaintiffs,

v.

LYNN BESHEAR, in her official capacity as Commissioner of the Alabama Department of Mental Health,

Defendant.

CONSENT DECREE

CASE NO. 2:16-cv-00798-MHT-CSC

CLASS ACTION FOR
DECLARATORY AND
INJUNCTIVE RELIEF

(WO)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EBLOOD, et

ntiffs,

CASE NO. C14-1178 MJP

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

WASHINGTON STATE DEPARTMENT
OF SOCIAL AND HEALTH SERVICES,
et al.,

Defendants.

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Plaintiffs bring this action seeking an order to compel Defendants to provide timely competency evaluation and restoration services to class members—individuals charged with a crime who are detained in city and county jails awaiting services—after a court orders that Defendants provide class members with those services. The Court previously granted Plaintiffs' motion for summary judgment, finding that wait times of up to seven days were constitutional, and that wait times beyond seven days were suspect. In order to determine the precise outer boundary of constitutionally permissible wait times in this case, and to determine the appropriate

LEGAL ACTION

HI, AK, CA, WA, OR, NV, UT, CO, LA, AR, MO, TN, FL,
AL, OH, PA, VT, DC...*and more to come*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-CV-02285-NYW

CENTER FOR LEGAL ADVOCACY, d/b/a
DISABILITY LAW COLORADO,

Plaintiff,

v.

MICHELLE BARNES,
in her official capacity as Executive Director
of the Colorado Department of Human Services, and

JILL MARSHALL,
in her official capacity as Chief Executive Officer
of the Colorado Mental Health Institute at Pueblo,

Defendants.

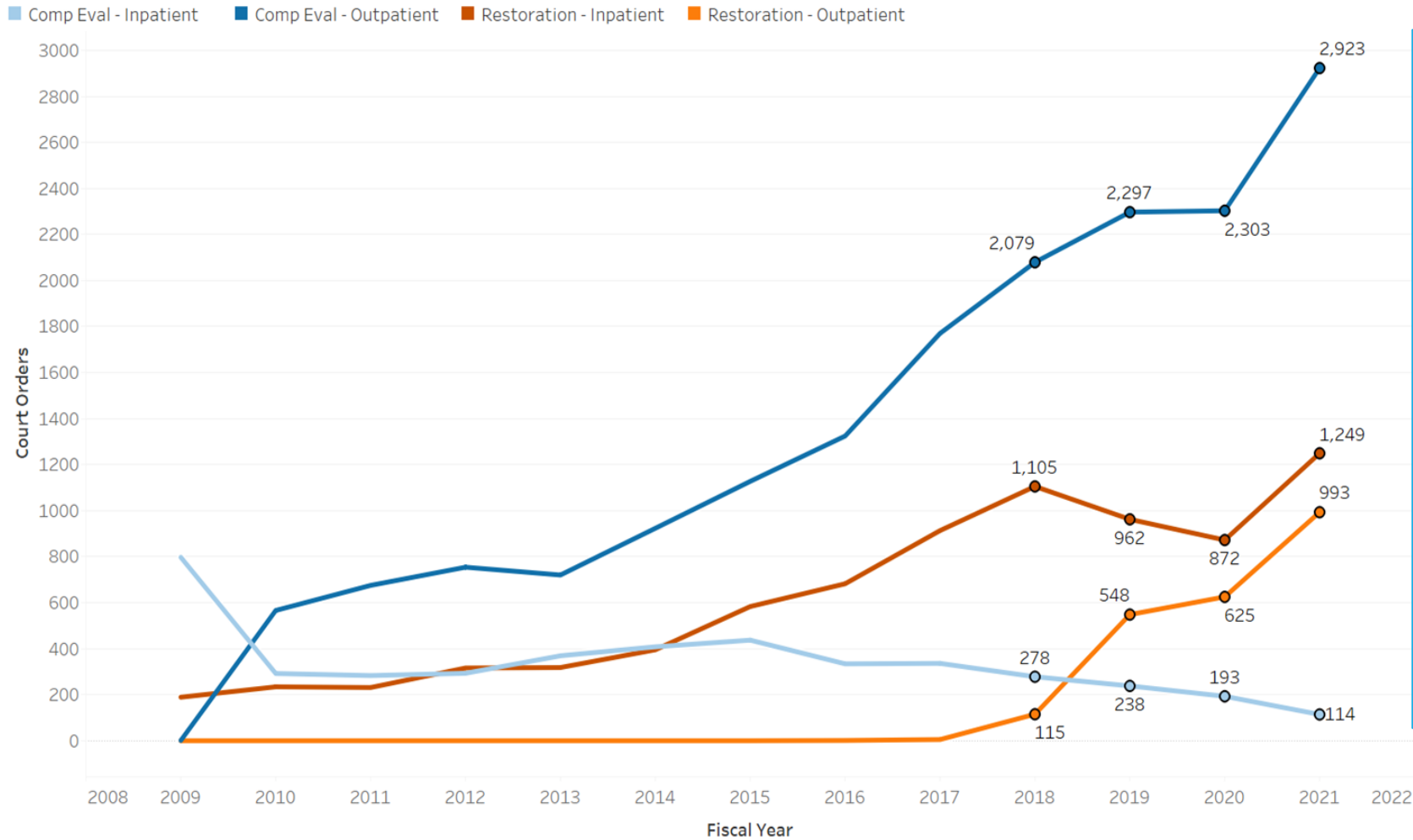
CONSENT DECREE



COLORADO'S "COMPETENCE CRISIS"



COLORADO'S COMPETENCE DEMAND



FY 2022

- EVALUATION ORDERS
2819
- INPATIENT REST ORDERS*
1618
- OUTPATIENT REST ORDERS
978

* Record high

COLORADO'S COMPETENCE DEMAND & SUPPLY

Summary of Inpatient Restoration Service Capacity

Setting	Total currently active restoration beds	Total future restoration beds	Funding Source
CMHHiP*	226	249	CDHS
CMHHiFL*	22	44	CDHS
Arapahoe RISE	60	60	CDHS
Boulder RISE	18	18	CDHS
Denver County Restoration Treatment Unit (DRTU)	12	22	CDHS / Fines / Emergency
Denver Health	15	12	CDHS / Emergency
Peakview Hospital	54	10	CDHS / Emergency
Additional private hospitals (e.g., Medical Center of Aurora, etc.)	15	60	Emergency
Total	412	473	

COLORADO'S CURRENT WAITLIST FOR COMPETENCE SERVICES

COMPETENCE EVALUATIONS

- INPATIENT: 21 days (generally within consent decree timeframes)
- ON BOND: months (not within the scope of the consent decree)

COMPETENCE RESTORATION

- INPATIENT / JAIL-BASED: 108 days (far beyond consent decree timeframes; some wait more than 1 year)
 - 483 defendants waiting for inpatient restoration on June 30, 2023
- OUTPATIENT: no wait (more than a third of all people found ITP are ordered to Outpatient Restoration)

ESTIMATING FUTURE COMPLIANCE

DEMAND IS NOT SLOWING

CAPACITY IS NOT KEEPING PACE

STAFFING SHORTAGES EXACERBATE THE PROBLEM

WITH NO CHANGES, THE NUMBER OF PEOPLE WAITING
– AND THE TIME THEY SPEND ON THE WAITLIST –
WILL INCREASE





COLORADO'S RESPONSE



RECENT IMPROVEMENTS

- SB17-012 – Established and formalized Community-based Competency Restoration Treatment
- SB18-251 – Statewide BH Court Liaison program created the Bridges Program
- SB19-223 – Competency Bill that created major overhaul to evaluations, time frames for restoration, a default to outpatient restoration, codified parts of the Consent Decree



CONSENT DECREE

- Focus on community-based and civil services



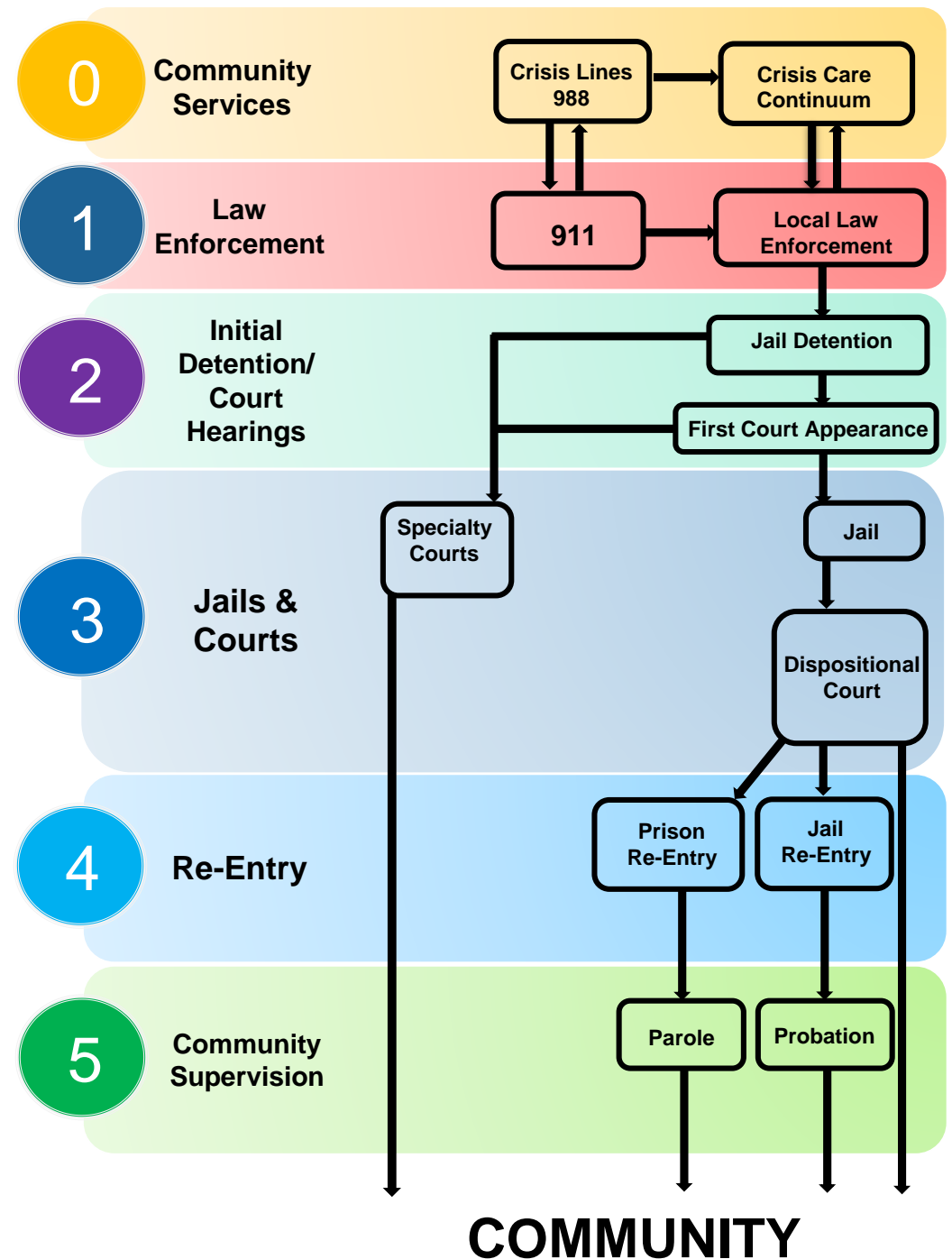
SEQUENTIAL INTERCEPT MODEL

Deflect

Crisis lines, co-responding, civil commitment, AOT

Divert

Reduce “eligible” offenses,
Implement specialty courts and financial incentives for diversion rather than pursuing ISTs



CONSENT DECREE

- Focus on community-based and civil services
- Requires placement decision for anyone opined as incompetent



COLORADO'S CONTINUUM OF COMPETENCY RESTORATION TREATMENT OPTIONS



Outpatient Competency Restoration Treatment

Jail-based Competency Restoration Treatment

Inpatient-based Competency Restoration Treatment



CONSENT DECREE

- Focus on community-based and civil services
- Requires placement decision for anyone opined as incompetent
- Requires triage decision for anyone recommended for inpatient restoration (Tier 1 and Tier 2)



TRIAGE > WAITLIST

Traditional systems function more like the DMV

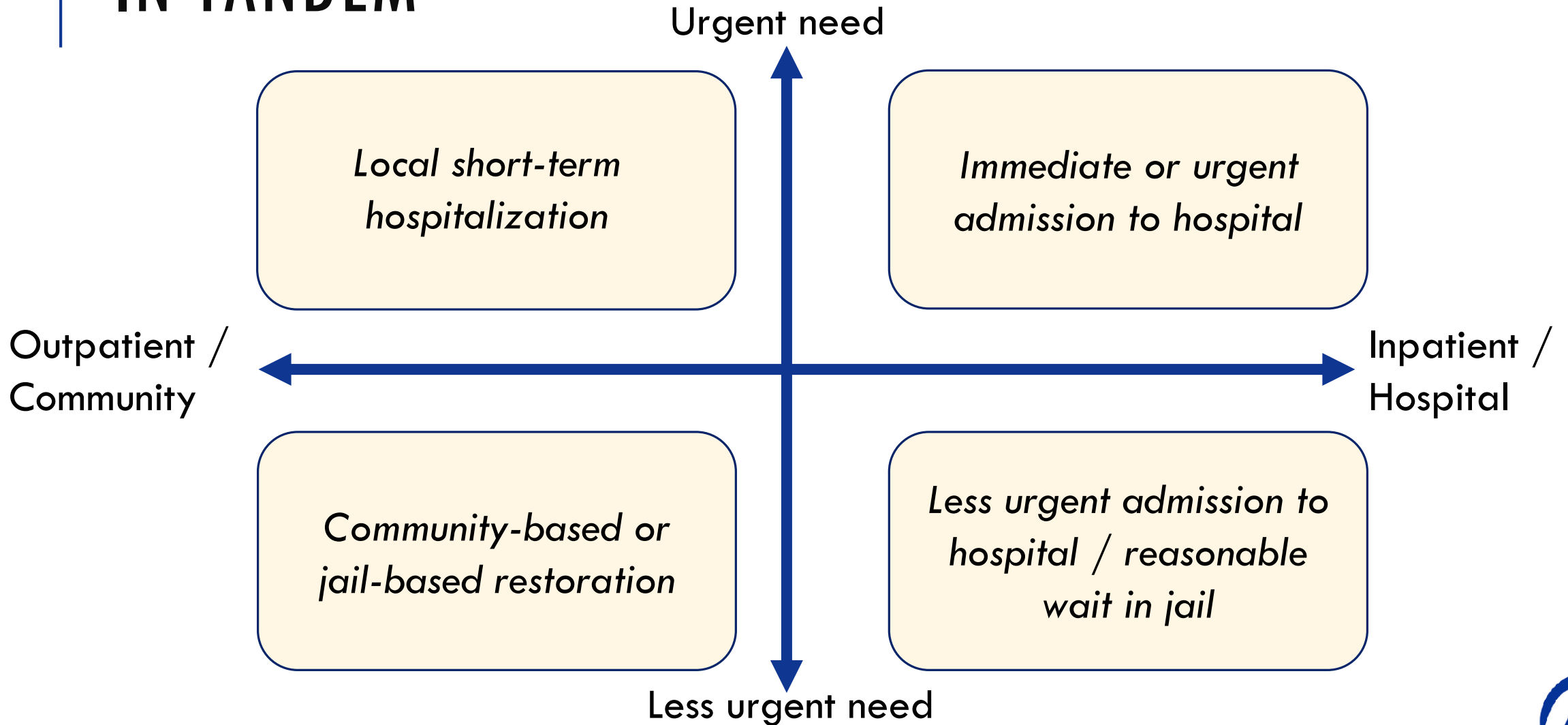
- “Please take a number” and receive restoration in the order you appear.

An ideal competency services system functions like a hospital emergency room.

- Those with the most acute needs receive priority access to more intensive services.



IN TANDEM



CONSENT DECREE

- Focus on community-based and civil services
- Requires placement decision for anyone opined as incompetent
- Requires triage decision for anyone recommended for inpatient restoration (Tier 1 and Tier 2)
- Implemented Forensic Services Team to monitor everyone on the waitlist every 10 days and facilitate communication among stakeholders



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- Requires placement decision for anyone opined as incompetent
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- Implemented Forensic Services Team to monitor everyone on the waitlist every 10 days
- Levies fines for non-compliance





FINES COMMITTEE Allocated Funds Summary

The Competency Waitlist Fines Fund was created by a federal court consent decree in litigation addressing Colorado's Competency to Stand Trial system. The Fines Committee was established to oversee the Fines Fund; its purpose is to support programs that have potential to reduce the State's competency restoration waitlist.

Denver Competency Diversion

\$1,029,996 - Diverting from prosecution those defendants who are likely to be found incompetent to proceed. The Fines Committee funds a program administrator, two program navigators, and partial salaries for prosecutors and public defenders who work with clients in the program. Funding also provides for direct wraparound client services, including emergency and temporary housing, transportation assistance, mobile phone, hygiene items, clothing, and nutritional assistance.

Mesa County Pretrial Community Alternative Placement

\$27,900 - Diverting individuals, deemed likely to be found incompetent to proceed, from confinement to supportive community-based treatment. The Fines Committee funds inpatient treatment for clients in the PreCAP program.

Community Based Enhanced Restoration

\$400,000 - Providing Assertive Community Treatment to individuals so that they can be released on bond and restored to competency out-of-custody. The Fines Committee funds short-term housing options for clients who would otherwise be homeless.

Colorado Coalition for the Homeless (CCH)

\$4,964,964 - Providing modified Assertive Community Treatment level services to clients who are referred through the Office of Behavioral Health's Forensic Support Team as appropriate for Outpatient Restoration. Additionally, start-up funding was provided in 2019 to enable the program to purchase a 182-unit housing facility, out of which this, and other Colorado Coalition for the Homeless programs are operated.

Larimer County Competency Docket

\$533,242 - Diverting individuals involved in the competency process from custody while coordinating necessary care in the community. The Fines Committee funds a competency services case manager and a competency services team lead.

Aurora Municipal Court Sustained

\$514,384 - Screening individuals booked in the municipal jail and assessing appropriate individuals for competency. The program connects clients to treatment out of custody and works toward prosecutorial diversion. The Fines Committee funds a program administrator, pays for competency evaluations, and provides cell phones for clients.

SummitStone Competency Hub

\$3,029,283 - Increasing psychiatric services in the Larimer County Jail and establishing a community-based competency hub that enables clients' medication management and provision of services.

IMPACT Integrated Insight Therapy

\$428,000 - Diverting individuals on whom competency is raised, from confinement, by providing dedicated program housing with treatment and wraparound services. The Fines Committee funds a case manager, a house manager, two peer support professionals, monitoring services, and two houses for clients to live.

University of Denver's Denver FIRST Program

\$948,729 - Identifying and assessing clients ordered to outpatient competency restoration programs for traumatic brain injury and acquired brain injury, to enhance appropriate interventions for those identified clients, and to provide training to jail staff and providers.

Colorado Mental Health Institute

\$669,850 - Purchasing and providing cellular phones, access (minutes), and transportation for competency-involved individuals during the pandemic, as well as laptops and related expenses for providers and local jails to allow pandemic-era competency services to continue.

Boulder County Community Justice Services

\$220,000 - Supporting aspects of the State Court Bridges Program, including the provision of access to services to enable the release from custody for competency clients.

Ananeo Competency Housing

\$447,480 - Providing housing and services associated with supportive monitored sober housing. Twenty dedicated beds are reserved for individuals, suitable for diversion from confinement, who are receiving outpatient competency restoration and treatment, referred by the Forensic Support Team or Bridges program.

Larimer County Public Defender's Office

\$262,000 - Establishing a dedicated Senior Public Defender position for two years to support the Larimer County Competency Docket.

Mile High Behavioral Healthcare

\$137,494 - Assisting clients with acquiring treatment and wraparound services out of custody. Its target population includes pre-release incarcerated clients with mental health and substance use disorders. The Fines Committee funds two clinical case managers.

Denver Sheriff Department

\$663,114 - Supporting the Denver Restoration Treatment Unit, a jail-based initiative that provides programming focused on competency restoration, general mental health needs, and enhancing life skills.

Peak View Behavioral Health

\$440,800 - Providing psychiatric beds for out-of-custody competency clients on an emergency basis.

Denver Health

\$3,270,000 - Providing psychiatric beds for out-of-custody competency clients on an emergency basis.

Gateway to Success Day Reporting Center

\$275,000 - Establishing a Day Reporting Center with treatment, medication management, daily classes, peer support, and case management in a warm and welcoming space to individuals receiving out-of-custody competency evaluation and restoration.

Embark Housing and Day Reporting Center

\$306,150 - Operating a Day Reporting Center to provide outpatient restoration clients with treatment, classes, peer support, and case management, as well as providing sober living housing to serve individuals released from confinement who are receiving competency restoration.

SAFER Opportunities Colorado

\$2,007,500 - Offering safe, continuous hotel sheltering in Arapahoe County with a continuum of community-based, client-centered safety net services. The Fines Committee funds numerous positions and wraparound services.

Cypress Cares Assisted Living

\$822,000 - Providing ten supportive temporary beds to enable client benefits enrollment to fund longer-term out-of-custody placement during restoration.

Fee: Strategy & Evaluation, LLC

\$237,500 - Auditing and evaluating funded programs, as well as providing administrative support to the Fines Committee.

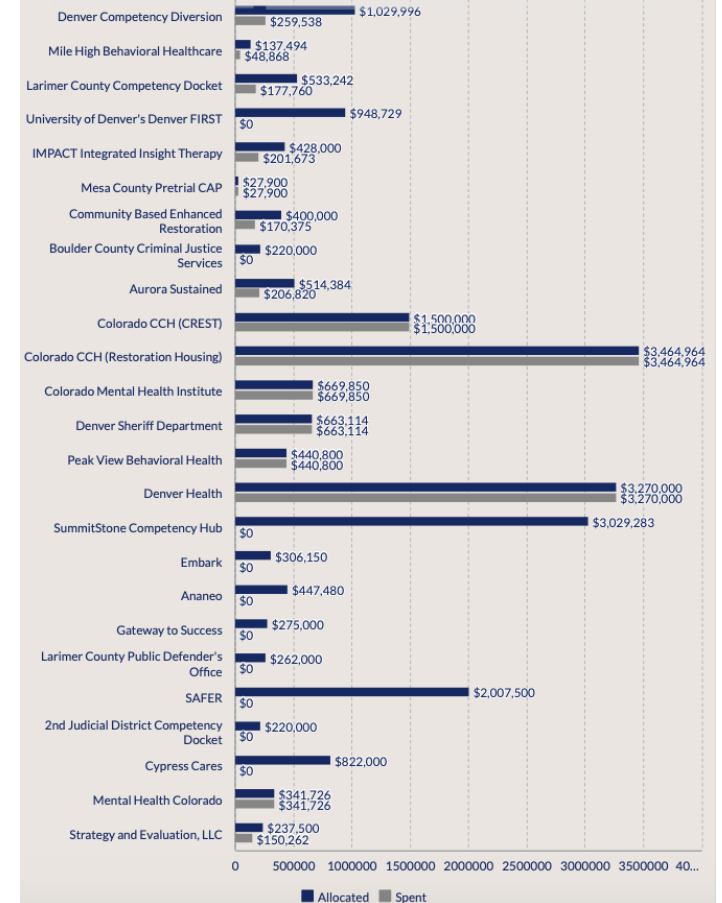
2nd Judicial District Competency Docket

\$220,000 - Establishing a Docket Coordinator position for two years to support the 2nd Judicial District Competency Docket.

Fee: Mental Health Colorado

\$341,726 - Serving as the fiscal agent, providing additional administrative support for funded programs and sponsoring the employment of a cultivator to help communities develop new programs.

	Total Fines Received \$29,722,522 As of 03/10/23	Total Funds Allocated \$22,197,112 As of 03/10/23	Total Funds Spent \$11,593,650 As of 03/10/23
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THE COMPETENCE SYSTEM IN COLORADO

- Informed by national innovation, empirical best and emerging practices, and professional expertise
- It is a model system
- It addresses competence evaluation and restoration with excellent staff and programming
- It offers individualized options and plans for evaluation and restoration



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 - It offers individualized options and plans for evaluation and restoration
-
- However, it is overwhelmed by volume
 - Colorado's competence crisis is not due to *sheer* volume, but *inappropriate* volume



THE COMPETENCE SYSTEM IN COLORADO

- Colorado's competence system is overwhelmed by volume
- Colorado's competence crisis is not due to *sheer* volume, but *inappropriate* volume
- The solution lies in using and expanding the civil system for easy access to effective treatment and resources to navigate life with a serious mental illness *before* a criminal offense occurs
 - Commitment to outpatient treatment and medication must be possible when necessary



**RESTORATION
IS BOTH “TOO MUCH” AND “TOO LITTLE”**

RECOMMENDATIONS

- 1. Colorado's competence crisis can only be solved through collaboration among a cross-section of public agencies.*
- 2. Colorado should convene decision-makers to create solutions.*
- 3. Colorado's stakeholders must consider emerging competence innovations from other states.*
- 4. Colorado must embrace civil mental health solutions first, diversion and deflection second, and competence services only when merited by the circumstances of a serious offense*

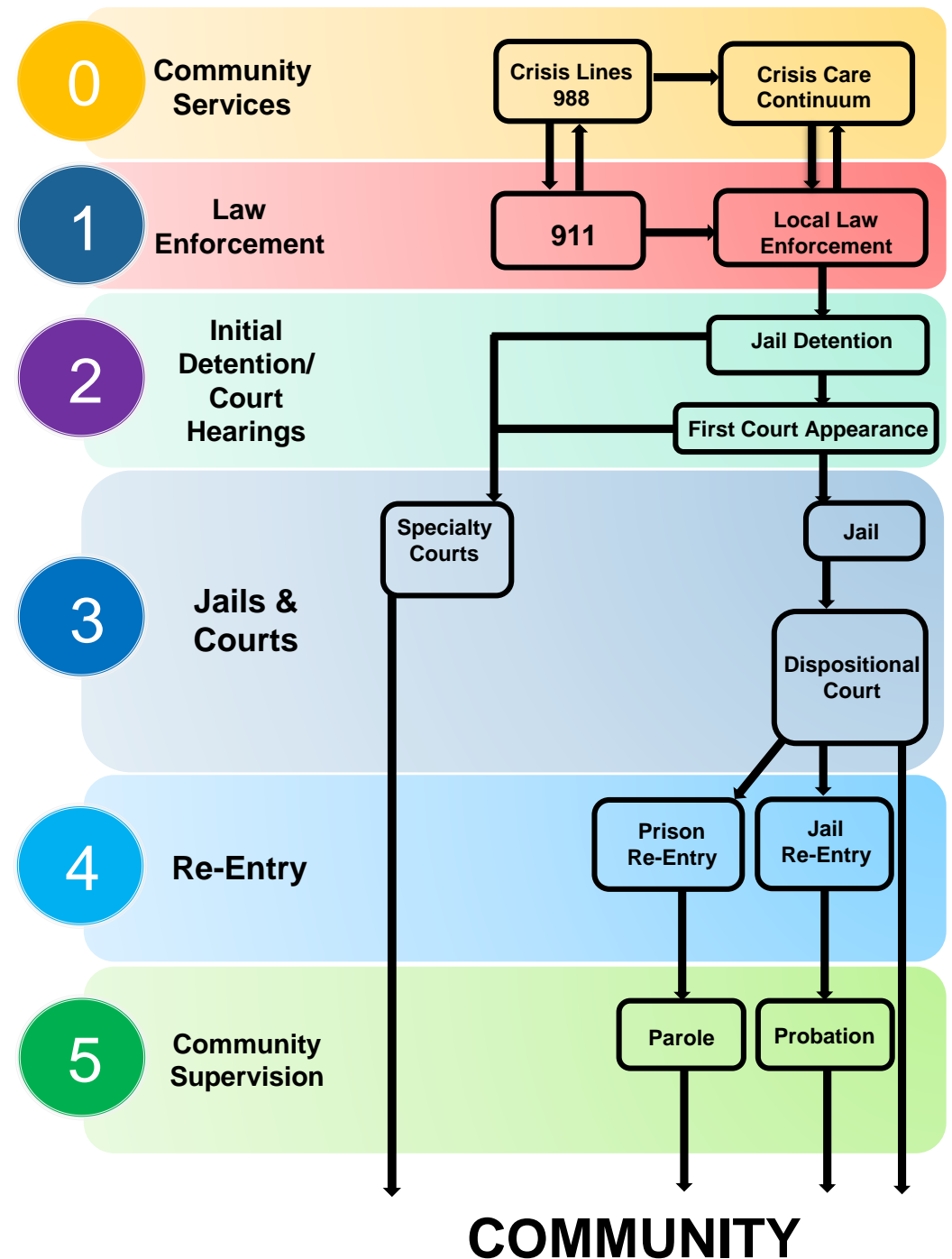
PRE-Competence STRATEGIES

Deflect

Crisis lines, co-responding, civil commitment, AOT

Divert

Reduce “eligible” offenses,
Implement specialty courts and financial incentives for diversion rather than pursuing ISTs
Create a center that includes resources, treatment, monitoring, peer support, and housing (e.g., the “Miami Diversion Center”)



POST-IST STRATEGIES

Expedite restoration “ramp up” and monitoring

- Early screening and meds, IMO's, court-based clinicians, competency courts or dockets, re-evaluation programs

Diversify restoration settings

- Enhance OCRP (resources, housing, and monitoring), utilize mental health transitional living homes, create additional inpatient capacity

Policy reform, data, and program evaluation

- Limits per *Jackson*, remove competence for misdemeanants, improve data outcomes and projections, enhance the use of IMO's

WHAT HAS **NOT** WORKED IN OTHER PLACES

More reliance on inpatient capacity

Creating a competence system that addresses mental health needs beyond competence

Lowering the certification standards for evaluators, faster evaluations, competence checklists,

Reliance on a forensic department or office to solve the crisis – this is a *public health crisis*, not a forensic mental health crisis



THANK YOU!



Groundswell Services, Inc.