



Virginia Department of
Behavioral Health &
Developmental Services

**CREATING A RESTORATION PLAN:
TAILOR SERVICES TO MEET
THE DEFENDANT'S NEEDS**

Steps in Developing Restoration Plan

1. Review CST evaluation and other records
2. Determine general parameters of outpatient restoration
3. Determine specific restoration plan for defendant
4. Consider cognitive deficits
5. Consider problems with inattention and concentration
6. Consider psychotic disorders
7. Consider affective disorders
8. Consider issues of motivation

Step 1: Review CST Evaluation and Other Records

- Review the original CST evaluation completed pursuant to § 19.2-169.1
- Check to see if defendant has previously received services from your agency.
- Review the collateral materials that you have collected.
- Consider if there are any collateral sources of information that should be contacted (family member, treatment provider, forensic evaluator, etc.)

Step 1: Review CST Evaluation and Other Records

Explore Nature of Evaluation/History/Demographic Information

- When and where was evaluation done (jail, community, hospital)?
- What sources of information were utilized during the evaluation (psychological testing, use of specialized forensic tools, review of prior psychiatric records, interviews with family members, etc.)?
- Any indication of developmental delays in early childhood?
- Any indication of learning issues/special education in school?
- Indications of troubles with daily living in adulthood?
- *Any prior history of psychiatric treatment?*
- *Any history of reported closed head injuries or medical conditions which could impact on mental health?*

Step 1: Review CST Evaluation and Other Records

Mental Status Examination/Diagnostic Formulation

- What significant symptoms of mental illness were noted to be present?
 - Hallucinations
 - Delusions
 - Disorientation confusion
 - Pressure speech, racing thoughts, flight of ideas
 - Concrete thinking
 - Evidence of intellectual impairment
- Are diagnoses offered? Does the evaluation substantiate the existence or lack of existence of disorders?
- If testing was administered, what were the essential findings?
- Does evaluation address defendant's current medication situation? Address issues of compliance?

Step 1: Review CST Evaluation and Other Records

Opinion Regarding Competency

- Look for examples of factual knowledge deficits – what specifically didn't the defendant understand
- Look for examples of rational deficits – specifically what deficits were identified in defendants ability to rationally understand and participate in process
- Look for examples of deficits in defendant's ability to assist in own defense
- Look for association between deficits and symptoms – which symptoms are causing the deficits
- Look for association between symptoms and underlying mental illness

Step 1: Review CST Evaluation and Other Records

What if the defendant looks different than described in the evaluation?

- There are many reasons why defendants may appear different when you see them than from how they are described in the evaluation:
 - Individual stopped taking medications
 - Despite medication compliance, individual experienced resurgence of symptoms
 - Defendant had limited motivation during initial evaluation but now is motivated
 - Evaluator only did cursory evaluation and did not uncover all the issues
- You are tasked with restoring the individual before you, not necessarily the person described in report
 - Even if they had factual understanding before but do not appear to have it now it is incumbent on you to ensure they have factual understanding
 - Generate hypotheses about why defendant may be different and test those hypotheses

Step 2: Determine General Parameters for Outpatient Restoration

- Right to speedy trial dictates that defendant receive aggressive treatment. There is an obligation to provide sufficient services to make restoration likely. Restoration counselor should meet with defendant a minimum of once a week. Exceptions should be discussed with DBHDS staff.
- Restoration sessions generally should last 45 – 60 minutes unless otherwise indicated due to disability. For defendants with cognitive impairments, the sessions likely will occur more frequently but be of shorter duration.
- Client has right to treatment in least restrictive environment.
- For defendants who are incompetent due to mental illness – most of the treatment will focus on underlying condition causing incompetency.

Step 2: Determine General Parameters for Outpatient Restoration

- Ability to be restored is not diagnosis-specific but related to symptoms causing impairment - two defendants with same diagnosis may have different outcomes - one may be restored and one unrestorably incompetent to stand trial (URIST)
- Hallucinations are “easier” to treat than delusions
- Thought disorganization is “easier” to treat than paranoia
- Negative symptoms are difficult to remediate
- Mild ID easier to restore than Moderate to Severe ID
- Individual with Autism Spectrum Disorder with normal IQ may be URIST due to communication and social interaction impairments
- Dual diagnosis of MI with ID generally has very guarded prognosis
- Dementias tend to be progressive and irreversible

Step 3: Restoration Plan Development

Based on your initial assessment and the original CST evaluation, determine whether the defendant has deficits in:

- a) Factual understanding of legal issues and proceedings
- b) Rational understanding of legal issues and proceedings
- c) Ability to communicate with and assist legal council

Based on your initial assessment and the original CST evaluation, determine the likely source of the deficits:

- a) Cognitive issues either related to a developmental disorder, dementia, or other disorders
- b) Symptoms of psychosis which impair thinking, perception, and/or communication
- c) Issues of impaired attention and/or concentration
- d) Affective issues – mania, depression
- e) Issues with motivation

Step 3: Restoration Plan Development

- Each defendant should have a written restoration plan to guide the restoration counselor's work with the defendant.
- All CSBs have different record keeping systems. Some are problem oriented, some are strength oriented, etc.
- If your restoration planning process is problem driven, then the "problem(s)" for the defendant are:
 - The defendant has been found to lack a factual understanding of court issues and was found incompetent to stand trial and/or
 - The defendant has been found to lack a rational understanding of court issues and was found incompetent to stand trial and/or
 - The defendant has been found to be unable to assist his/her attorney in his/her own defense and was found incompetent to stand trial

Step 3: Restoration Plan Development

- Regardless of the strengths and weaknesses of the defendant and the record keeping orientation of the agency, the plan should contain goals that revolve around these three points:
 - The defendant will evidence a sufficient level of factual understanding of court issues so as to be found competent to stand trial and/or
 - The defendant will evidence a sufficient level of rational understanding of court issues so as to be found competent to stand trial and/or
 - The defendant will evidence sufficient ability to assist counsel in his own defense so as to be found competent to stand trial.

Step 3: Restoration Plan Development

Sample Restoration Interventions

- The defendant will meet with the restoration counselor __ times per week to receive education about the legal system to improve their factual understanding of court issues
- The defendant will meet with the restoration counselor __ times per week to discuss court related issues in order to improve their rational understanding of court issues
- The defendant agrees to a referral to a psychiatric evaluation of _____ symptoms which contribute to defendant's incompetency to stand trial
- The defendant will receive supportive counseling to encourage full engagement with treatment to ameliorate symptoms causing incompetency
- The defendant will sign releases of information to allow the restoration counselor to acquire prior treatment records for the purpose of maximizing treatment
- The defendant will agree to be evaluated by psychiatrist or psychologist for outcome evaluation at the end of treatment.

Sample Restoration Plan:

Problem Statement: Mr. Doe has been found incompetent to stand trial because he lacks a factual understanding of the court process.

Goal: Mr. Doe will become competent to stand trial.

Objective – Mr. Doe will increase his factual understanding of the court process, including developing a better understanding of his charges, the role of the prosecutor, and the possible outcomes for his case (i.e., plea bargain).

Interventions:

- The defendant will meet with the restoration counselor 3 times per week to receive education about the legal system so as to improve their factual understanding of court issues.
- The defendant will agree to a referral to a psychiatric evaluation of symptoms which contribute to defendant's incompetency to stand trial.
- The defendant will receive supportive counseling to encourage full engagement with treatment to ameliorate symptoms causing incompetency.
- The defendant will sign releases of information to allow the restoration counselor to acquire prior treatment records for the purpose of maximizing treatment.
- The defendant will agree to be evaluated by psychiatrist or psychologist for outcome evaluation at the end of treatment.

Step 4: Consider Cognitive Deficits

Types of cognitive impairments

- Impairments in learning new information
- Impairments in retaining information over time
- Impairment in understanding abstract concepts
- Impairments in communicating information/ideas
- Issues with inattention and concentration
- Issues generalizing knowledge/information to novel situations

Step 4: Consider Cognitive Deficits

Suggestions when there are Impairments in Learning and Retaining Information

- Repeated instruction
- Shorter but more frequent instruction
- Instruction utilizing learning style strengths
- Multisensory instruction
- Break concepts into smaller bits
- If impairment is secondary to psychiatric issue, arrange for psychiatric assessment
- Learn one, do one, teach one
- Recognition memory is easier – start with recognition then go to recall
- Start with short interval between instruction & recall and then extend interval over time



Step 4: Consider Cognitive Deficits

Suggestions when there are Impairment in Understanding Abstract Concepts

Break down concepts into small bits:

- Use a variety of scenarios to teach concept
- Start with more simple abstract concepts and build to more complex – teach defendant to generalize
- Use multiple modalities to teach (e.g. use video, use role play, etc. to teach concepts)
- If difficulties are related to underlying psychiatric condition, arrange for psychiatric consultation for possible medication trial. If referred, you need to be present and/or consult with psychiatrist before assessment to explain the nature of your work. The psychiatrist may not appreciate the importance of remediating these issues.

Step 4: Consider Cognitive Deficits

Suggestion when there are Impairments in Communicating Information/Ideas

- Some individuals with ID are not used to answering questions for themselves. Need to encourage them to communicate and respond for themselves.
- Have them communicate about topics of interest just to get them in the habit of communicating then later move to communicating about court related issues.
- Teach them to respond when asked for clarification – at times they may “shut down” but, with practice and reinforcement, you can help them learn to explain themselves.
- If issues with communication are related to underlying psychiatric condition (e.g. negative symptoms of schizophrenia, depression, etc.), arrange for psychiatric evaluation.

Step 4: Consider Cognitive Deficits

Issues Generalizing Knowledge/Information to Novel Situations

- Practice by giving alternate scenarios/examples of the same concept
- Begin with short duration between sessions then expand interval over time
- Sessions should initially be short but grow in length over time.

Step 5: Consider Problems with Inattention and Concentration

- Teach attending skills. At first may need to focus on non-court related topics then gradually introduce court related topics.
- Start with short periods of attention and gradually increase periods (e.g. at first may only talk about court for 5 minutes, then 10 minutes, then 15 minutes).
- Use redirection to help them learn to focus. This also gives them exposure to what they will likely experience with their attorney.
- Have family/support system/ care providers practice concentration/ attention in between sessions.
- If inattention is related to underlying mental illness, refer defendant to psychiatrist for medication assessment.



Step 6: Consider Psychotic Disorders

Primary intervention is to address the underlying psychosis

- Psychiatric consultation – must be actively involved to ensure psychiatrist understands context of your involvement and the need to ameliorate symptoms to a degree defendant is competent to stand trial.
- Assess medication compliance and work on strategies to improve compliance when indicated.
- Assess if thoughts are paranoia or negative world view secondary to life experiences or underlying personality disorder.
- Reality orientation – provide feedback.
- Encourage involvement in structured activities.
- Referral to case management for housing, transportation, etc. may be needed.

Step 6: Consider Psychotic Disorders

- Establishing rapport so defendant trusts you and participates in the instruction.
- Some repeated instruction on factual issues to the degree defendant can tolerate.
- Continuous assessment for impairments in rational understanding secondary to paranoia or delusions.
- Teach with hypotheticals and then try to have defendant generalize knowledge to their particular situation.

Step 6: Consider Psychotic Disorders

- For many defendants, defendant will appear competent once psychosis is adequately addressed. For some, it will require some additional instruction.
- **Restoration provider should continuously assess defendant's progress and assess if the defendant needs inpatient hospitalization:**
 - Meets civil commitment criteria
 - Despite medication changes and medication compliance, defendant's psychosis does not improve
 - Ongoing issues of medication non-compliance resulting in prolonged incompetency
 - Inability to actively engage in treatment secondary to symptoms of psychosis

Step 7: Consider Affective Disorders

Depression

- Refer for psychiatric consultation.
- Refer for individual/group psychotherapy.
- Monitor medication compliance and help to develop strategies to enhance compliance.
- Encourage involvement in structured activities.
- Refer to case management – housing, transportation, or other interventions that will enable to restoration process to continue. For example, if a person is homeless they will not be able to participate in restoration.

Step 7: Consider Affective Disorders

Depression

- Initially, sessions will be more about establishing rapport and providing support to the defendant
- Sessions will shift towards teaching about legal concepts over time
- Watch for anhedonia (lack of interest) and how it might be impacting the decision making of the defendant, possibly in subtle ways
- Generally when depression abates, most defendants are competent - some may require some minor instruction concerning court topics
- Consider the importance of keeping defendant compliant with medication up to and throughout a possible trial, particularly if residing in the community



Step 7: Consider Affective Disorders

Depression

Restoration provider should continuously assess defendant's progress and assess if the defendant needs inpatient hospitalization:

- Meets civil commitment criteria
- Despite medication changes and medication compliance, defendant's depression does not improve
- Ongoing issues of medication non-compliance resulting in prolonged incompetency
- Inability to actively engage in treatment secondary to symptoms of depression

Step 7: Consider Affective Disorders

Mania

- Refer for psychiatric consultation
- Monitor medication compliance /strategize to enhance compliance
- Encourage involvement in structured activities
- Refer to case management – housing, transportation, etc.
- Initial sessions will be more about establishing rapport and aiding defendant to manage their symptoms
- Sessions will shift more towards teaching legal concepts over time
- Watch for grandiosity affecting decision making
- Generally when mania subsides, most defendants are competent - some may require some minor instruction

Step 7: Consider Affective Disorders

Mania

Restoration provider should continuously assess defendant's progress and assess if the defendant needs inpatient hospitalization:

- Meets civil commitment criteria
- Despite medication changes and medication compliance defendant's mania does not improve
- Ongoing issues of medication non-compliance resulting in prolonged incompetency
- Inability to actively engage in treatment secondary to symptoms of mania

Step 8: Consider Issues of Motivation

- Initial treatment will focus on establishing rapport, educating defendant ,and dispelling any inaccurate assumptions about consequences of ongoing incompetence
- If defendant remains unmotivated, educate about the consequences of ongoing incompetency (i.e. revocation of bond, admission to state hospital)
- If defendant continues to not be fully involved, “treatment” will focus on parallel assessment of defendant’s capacities in other realms of life
- If defendant is in jail setting, restoration provider will need to gather collateral observations of defendant’s functioning from jail staff
- Consider psychological consultation to obtain symptom validity testing and response bias testing
- Remember even individuals with mental illness or intellectual disabilities may exaggerate/feign symptoms. Just because someone is exaggerating/feigning does not mean they are not also mentally ill/intellectually disabled. Need data/observations to rule out MI or ID.

NEXT ON THE AGENDA

DIVIDE UP INTO SMALL GROUPS AND REFERENCE THE 3 CST EVALUATION EXAMPLES

- Psychotic Disorder
- Intellectual Disorder
- Motivational problems