DBHDS
Virginia Department of Behavioral Health and Developmental Services

*A life of possibilities for all Virginians*

# Forensic Patients

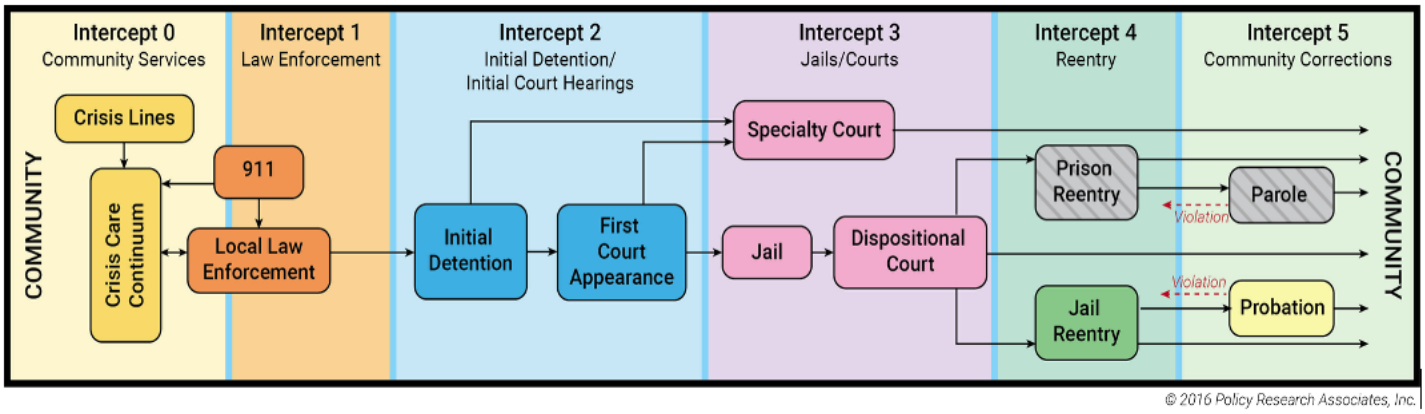
## Overview

Nation-wide, the number of justice-involved people with mental illness grows each year, and this is reflected in our jails and in our state hospital systems. The Virginia Compensation Board Mental Illness in Jails Report found that in June 2025, 22.47% of individuals in Virginia Jails had a Mental Illness, and 12.24% had a Serious Mental Illness. This is an increase from 13.95% and 7.50% respectively in June 2014. In Virginia in FY 2025, there were 2,236 adult forensic admissions to state hospitals, an increase of 974 (77.18%) from FY15. These numbers do not include individuals committed as sexually violent predators.

## Background

Competency restoration of incompetent defendants and emergency treatment of individuals from jail are primary drivers of the growth of forensic patients in state facilities. In FY25, a total of 354,956 bed days were utilized by all patients across all seven adult state behavioral health facilities. Of that total, 206,035 bed days (58.05%) were utilized by forensic patients including 142,829 (40.24%) Incompetent to stand trial, 19,258 (5.42%) Jail [criminal TDO], 8,540 (2.41%) Evaluation, and 35,408 (9.98%) Not Guilty by Reason of Insanity (NGRI).

The Sequential Intercept Model provides a framework for how individuals typically move through the criminal justice system, with distinct points where individuals with mental illness, substance use disorder, and/or developmental disability, can be diverted from the justice system to community-based mental health care. This model is used to assist with the development of strategies for reducing hospital census and routing people to appropriate levels of care.




*The Virginia Department of Behavioral Health and Developmental Services supports individuals by promoting recovery, self-determination, and wellness in all aspects of life.*

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# Issues

- Virginia code §19.2-169.2 gives courts discretion to order defendants found incompetent to stand trial to inpatient or outpatient competency restoration. If inpatient competency restoration is ordered, the defendant must be admitted within 10 days of receiving the order to a hospital designated by the Commissioner as appropriate for treatment. Currently, state hospitals are the sole provider of inpatient restoration services in the Commonwealth.
  - Increasing numbers of inpatient competency restoration orders puts the Commonwealth at risk of growing a waitlist and violating the 10-day rule in the Code. This could lead to serious consequences including Show Cause orders by individual courts and lawsuits against the Department for creating unconstitutional delays in competency evaluation and restoration. There is a legal precedence under *Trueblood et al. v. Washington State DSHS* (2016), with multiple states currently involved in lawsuits.
  - Misdemeanor defendants warrant special attention. In FY 2025, of the 11,253 inpatient admissions for restoration, 32.29% were for misdemeanor-only offenses. The average length of stay for restoration defendants in FY19-FY23 is 115 days (there is a 45 day "limitation" for certain misdemeanors, and those often convert to unrestorable status and remain hospitalized. In FY25, approximately 28,351 bed days were utilized to restore misdemeanor-only defendants, resulting in approximately $34 million in hospital costs alone. In most cases, restored defendants enter a plea bargain, receive time served, and are released back to the community.
  - DBHDS reimburses the CSBs for restoration services including outpatient forensic evaluation. However, resources are typically exhausted after several months.
- The median length of stay for a committed NGRI acquittee is five years; however, this varies based on the individual's clinical needs and risk for dangerousness. Virginia has a well-established graduated release process in which acquittees gain incremental privileges, with each privilege request reviewed by a panel of mental health and violence risk experts. Barriers to conditional release to the community may include difficulty in obtaining suitable discharge placements, or objections by the court.

# Successes

- 22 of 40 CSBs are providing forensic discharge planning services in 27 local or regional correctional facilities in the Commonwealth.
- DBHDS provides partial funding to six of the operating Behavioral Health Dockets to support staffing and treatment services.
- In FY 2024, there were 20 outpatient temporary custody orders, resulting in significant cost savings and bed days used. In addition, CSBs requested reimbursement for 374 outpatient restoration cases.

# Initiatives

- Exploring ways to divert more inpatient restoration orders, especially for misdemeanor offenses.
- Expansion of Forensic Discharge Planning duties in some localities to include earlier identification and diversion from jail, ideally before competency to stand trial is evaluated. FDPs are now integrated into DBHDS treatment teams so that there is continuity of care between the state hospitals, jails, and then the community.
- Creation of a Behavioral Health and Criminal Justice Coalition comprised of legal, criminal justice, policy, and behavioral health stakeholders for ongoing collaboration on ways to better serve this

population. Ongoing collaboration with stakeholders regarding diversion options, including assisting the Office of the Executive Secretary on their EDCOT study for the General Assembly.

- Exploring alternatives to inpatient restoration at DBHDS facilities to include jail-based and community-based programming. The Department is in active contract negotiations with three localities, with jail-based restoration units opening in 2026.
- Creation of forensic-specific discharge protocols to improve continuity of care between jails, hospitals, and the CSBs, with ongoing training.
- Improved facility-based treatment services for NGRI and restoration populations through targeted trainings.
- Forensic patient flow "audits" by Central Office staff of hospitals to improve efficiencies, including treatment delivery and completion of forensic evaluations in an effort to reduce length of stay.
- Improving collaboration with hospital, CSB, and jail partners through forensic evaluator office hours, restoration treatment provider office hours, and both state-wide and regional forensic meetings with CSBs, hospital staff, and jail mental health.
- Assisting localities with developing unique diversion and restoration options to reduce admissions.
- Ongoing initiatives around juvenile justice including the training of law enforcement officers and school administrators, and collaboration of mental health providers at juvenile detention centers.
- Promoting collaboration and education by providing trainings to judges and attorneys, and facilitating visits by judges and attorneys to DBHDS facilities.
- Creation of a group home for sexually violent predators with intellectual and developmental disabilities, to promote community reintegration of this specialized population.

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