SAMHSA's GAINS CENTER

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Substance Abuse and Mental Health Services Administration

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Advancing Reforms to Competence to Stand Trial and Competence Restoration: Key Learnings from Two States

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Overview

Every day, many criminal defendants across the nation await competence evaluations, often languishing in jails until a forensic inpatient bed is available and receiving limited mental health treatment. There is consensus from state policymakers and state and local behavioral health and criminal justice systems that reform is needed.

In response to this need, SAMHSA's GAINS Center convened a Learning Collaborative in 2018–2019 and a Community of Practice in 2019–2020 on competence to stand trial (CST) and competence restoration (CR). The purpose of these efforts was to:

1. enhance collective knowledge of critical issues and familiarity with CST/CR;
2. understand promising, best, and evidence-based practices in this area;
3. develop strategic plans that focus on CST/CR reforms; and
4. increase knowledge about the challenges and lessons learned in implementing changes to the CST/CR process.

Twelve states participated in the two convenings. The 2018–2019 Learning Collaborative involved both on-site and virtual events, and the 2019–2018 Community of Practice included virtual events. During both events, state teams had access to subject-matter experts (SMEs) and received technical assistance from SAMHSA's GAINS Center. This brief highlights some of the learnings from two participating states—Oregon, which participated in the second year, and Nebraska, which took part in both years.

Oregon

Like many states, Oregon is facing an increase in defendants who are found unable to aid and assist in their defense and have limited community-based restoration options. The Oregon State Hospital is under a 2003 judicial mandate (*Oregon Advocacy Center v. Mink*) that requires it to transport defendants who are unable to aid and assist in their defense to the hospital within 7 days of a judge's signed order.

Oregon's participation in the Community of Practice comes on the heels of active efforts by a broad group of stakeholders within the state under the auspices of the Oregon Health Authority and the Oregon Judicial Department, notes Debra Maryanov, senior assistant general counsel in the Oregon Judicial Department. Prior collaboration by those stakeholders resulted in the adoption of Senate Bill 24 (2019), which amended the state's aid and assist statutes with the goals of reducing the number of defendants committed to the state hospital and increasing community treatment and supervision. That coalition continues to evaluate and propose improvements to the aid and assist statutes in an active SB 24 Implementation Workgroup co-chaired by representatives from the legislative, judicial, and executive branches. The legislature is also actively involved in reform efforts via a workgroup examining the decriminalization of mental illness. Both the Senate and the House have Behavioral Health Committees. A legislatively created IMPACTS (Improving People's Access to Community-based Treatment, Supports, and Services) Grant Committee is distributing $10.6 million in state general funds to counties and Tribes to help reduce jail bookings for people with a history of serious mental and substance use disorders and recurring law enforcement involvement.

Oregon's participation in the Community of Practice included a statewide team and three pilot sites—Multnomah County (Portland), Jefferson and Crook counties (central Oregon, including the Warm Springs Tribe), and Douglas County (southern Oregon). The statewide team, which included representation from Disability Rights Oregon and the National Alliance on Mental Illness (NAMI), will design a general strategic plan for the development of regional behavioral health centers,

with a framework for implementation, operation, and oversight. The pilot sites will then identify their regional goals and strategies in alignment with that framework.

According to Maryanov, Oregon's principal goals are to:

1. divert individuals with behavioral health issues from the criminal justice system to services;
2. expand the availability of timely evaluations and community-based restoration services;
3. improve the equity of aid and assist processes statewide; and
4. make effective use of existing funds.

Balanced against that are what Maryanov sees as significant obstacles, including:

1. limited housing options, including residential beds (secure and non-secure);
2. few local services available to meet the full spectrum of behavioral health needs;
3. disagreement on how to balance some behavioral health and criminal justice issues; and
4. lack of consensus on whether to implement major changes in a system and funding process that has developed over the past 50 years.

Maryanov also sees several opportunities, among them the ability to:

1. leverage current statewide consensus on the need to improve Oregon's aid and assist processes;
2. reduce the state's trend of an increasing aid and assist population by developing additional structured diversion pathways;
3. improve collaboration among the behavioral health and justice systems to address the needs of individuals at the intersection of criminal justice and behavioral health more effectively;
4. develop regional hubs for evaluation and restoration services that offer more accessible, timely outcomes; and
5. increase transparency, efficiency, and consistency in funding for forensic evaluations and restoration services.

Maryanov is both surprised and frustrated at the funding complexity of aid and assist and behavioral health services in general, as well as the historical and political context that has led to the current system. Personally, Maryanov is motivated by "the passion for change [and the willingness] to improve the system among the partners across both behavioral health and criminal justice systems."

Through its strategic planning process as part of the 2020 Community of Practice, Oregon is planning to develop regional behavioral centers around the state to offer residents a variety of diversion, evaluation, and restoration services, and identifying funding sources to build these brick-and-mortar sites.

To develop centers that are responsive to local needs, the Center for Behavioral Health and Justice Integration has been conducting Sequential Intercept Model Mapping Workshops around the state, identifying gaps in services.

Maryanov notes that Oregon has benefited from technical assistance provided by SAMHSA's GAINS Center, including webinars, supporting documents, and the identification of SMEs to consult with the state on its strategic plan. Going forward, Maryanov sees the need for continuing assistance as Oregon works to finalize its strategic plan and identify funding.

Nebraska

Nebraska has been working over the last few years to improve its competence evaluation and competence restoration processes. Statute requires all competence restoration to be done at the Lincoln Regional Center (LRC), a state psychiatric hospital. In 2015, LRC and the State Court Administrator began a quality improvement initiative to address its waitlist. The waitlist decreased from an average of 21 individuals per week to an average of 5 per week. Despite its best efforts to streamline the process and reduce wait times, there is still a waitlist. "We had about a 75 percent increase in competence evaluation orders over the course of 2 years," says Jennifer Cimpl-Bohn, Psy.D, program director for forensic services at LRC. "And admissions for competence restoration increased by over 100 percent in 4 years," she adds.

This put stress on the community mental health system and local jails, notes Linda Wittmuss, deputy director of the Department of Health and Human Services (DHHS), Division of Behavioral Health. "With the increase in demand for forensic beds at LRC, we were seeing a decrease in the number of [available] general psychiatric beds," Wittmuss says. Further, she adds, "As the waitlist for forensic beds continued to grow, you had some pain points in the jails as well." Courts, public defenders, and county attorneys were challenging the system toward due process.

Prior to joining the GAINS Center Learning Collaborative in 2018–2019, Nebraska had been trying to identify strategies to offer competence restoration in settings other than inpatient psychiatric care for those who didn't need that level of assistance. "I remember somebody who had to quit a job to come check themselves in when it came time for them to come [to the state hospital] for competence restoration," recalls Jennifer Cimpl-Bohn,

a clinical psychologist at LRC and Nebraska's team lead. "Nobody felt good about those cases. We felt there had to be a smarter, more efficient, or more effective way to do this that was still safe."

With support from DHHS, the State Court Administrator Corey Steel, and a large group of stakeholders—including Douglas and Lancaster County attorneys, the Lancaster County Public Defender, Judge James Doyle, and DHHS Division of Behavioral Health Director Sheri Dawson—the legislature passed and Governor Ricketts signed LB686, sponsored by Senator Matt Hansen, in 2019. The bill requires Nebraska to develop and implement an outpatient community restoration process by July 1, 2021. Today in Nebraska, inpatient competence restoration averages 90 days, which is within the national average.

The timing of the GAINS project could not have been more perfect, according to Wittmuss. Continuing with the Community of Practice in 2019–2020, Nebraska has begun receiving technical assistance for program implementation. Wittmuss notes this includes answers to such questions as, "Who is the cadre of evaluators?" "What could an outpatient competence restoration program look like in terms of where and how it is provided?" "How do we implement that on a statewide basis?" "What are our criteria for admission?" "What does our training program look like?"

Both Wittmuss and Cimpl-Bohn see major opportunities in implementing LB686. To begin with, "I think we have a lot of community and justice support to move forward," Wittmuss says. She notes that a judge served as a member of the Learning Collaborative and adds, "So when we get down to the details of program implementation, I think we are ahead of the curve in having a system of care with justice system partners that will be better than if we were starting from scratch."

Cimpl-Bohn sees significant opportunities to improve clinical care, creating a more effective and efficient system by "reserving the most expensive state hospital beds for folks who really need acute inpatient care." Ideally, she notes, implementation of LB686 will allow the state to get people into treatment more quickly and match them with needed services while still meeting the criminal justice mandate of competence restoration.

Participation in both the GAINS Center activities has shown them that other states are struggling with the same issues. "It helps us feel like other people have encountered these battles, and it's not hopeless," Cimpl-Bohn notes. "There is a path to improve things."

Still, they are frustrated by the pace of change. "Even though everyone might agree on the problem and everyone might agree on the solution, it's not that simple to change," notes Cimpl-Bohn. Systemic challenges include statutory language, logistics, and funding. Stigma plays a role as well, according to Wittmuss. Individuals with mental disorders who are involved with the criminal justice system are doubly stigmatized, she notes. The Nebraska team has had input from people with lived experience, including representatives from the DHHS Division of Behavioral Health Office of Consumer Affairs, the Mental Health Association, and the statewide Justice Behavioral Health Collaborative.

Passage of LB686 is motivating the state team to move forward, Cimpl-Bohn points out. And participation in the Learning Collaborative helped key stakeholders coalesce around the process. "By bringing more partners together with a concentrated focus, we garnered more support and endorsement of the work," she says. "We were able to get everyone on the same page and address any reservations they had."

Nebraska expects to receive continued technical assistance from SAMHSA's GAINS Center, including practical advice on implementing a community-based restoration process. In addition, the state is looking at diverting people with mental illness from the criminal justice system. "We've gathered a lot of data through our Sequential Intercept Model Mapping processes and our focus on Intercepts 0 [Community Services] and 1 [Law Enforcement]," Wittmuss says.

LB686 has garnered interest from other states, according to Wittmuss, who has provided the statutory language to colleagues in other states. Nebraska is also learning from other states that have confronted similar issues. "I don't think we have to reinvent the wheel," Cimpl-Bohn says. The State Court Administrator; his team, the Justice Behavioral Health Committee; and the Division of Behavioral Health see a future that serves individuals more effectively and, most importantly, meets their needs through access to services.

About

SAMHSA's GAINS Center for Behavioral Health and Justice Transformation focuses on expanding access to services for people with mental and/or substance use disorders who come into contact with the justice system.

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