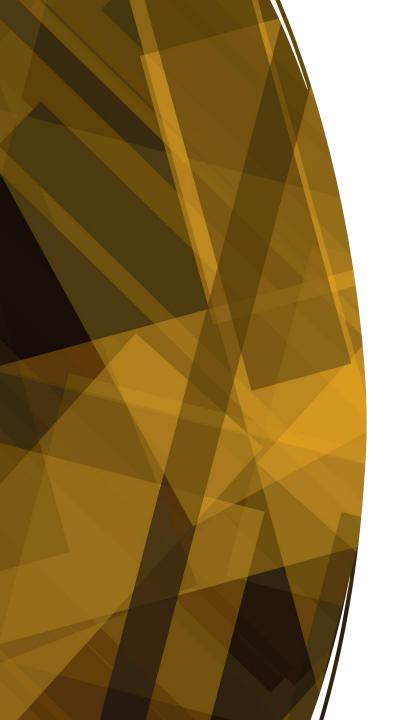
Forensic Services 2.0: From Tradition to Transformation*

25 October 2023 Amanda L. Gugliano, Psy.D. Director, Forensic Evaluation Service

*Much of the content is courtesy of Thomas Recore, M.D.

Part I. Trends Part II: Initial Evaluations Part III: Admissions and Treatment Questions



Part I: What's going on?

Forensic Services 2.0: From Tradition to Transformation

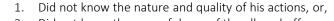
Mississippi Criminal Forensics Services Overview Tradition – The Old Way

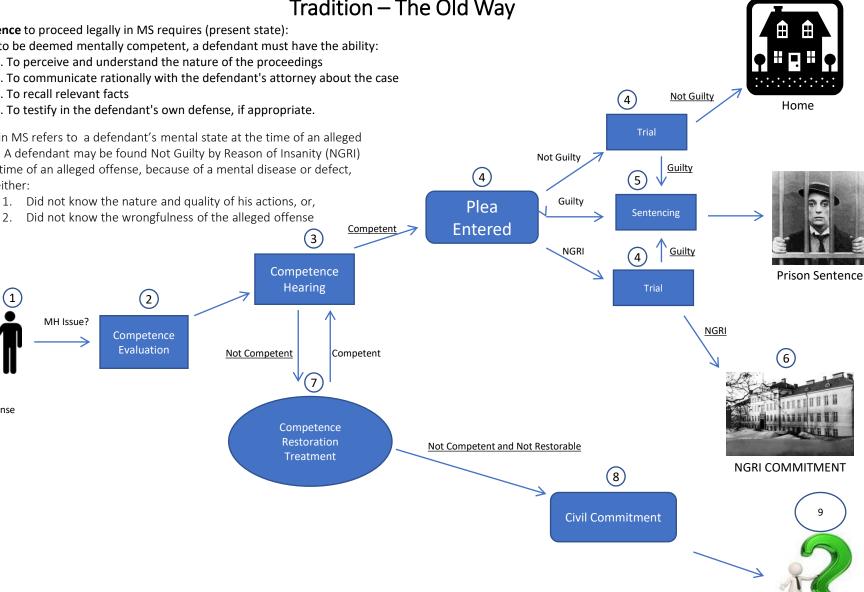
Competence to proceed legally in MS requires (present state):

In order to be deemed mentally competent, a defendant must have the ability:

- 1. To perceive and understand the nature of the proceedings
- 2. To communicate rationally with the defendant's attorney about the case
- 3. To recall relevant facts
- 4. To testify in the defendant's own defense, if appropriate.

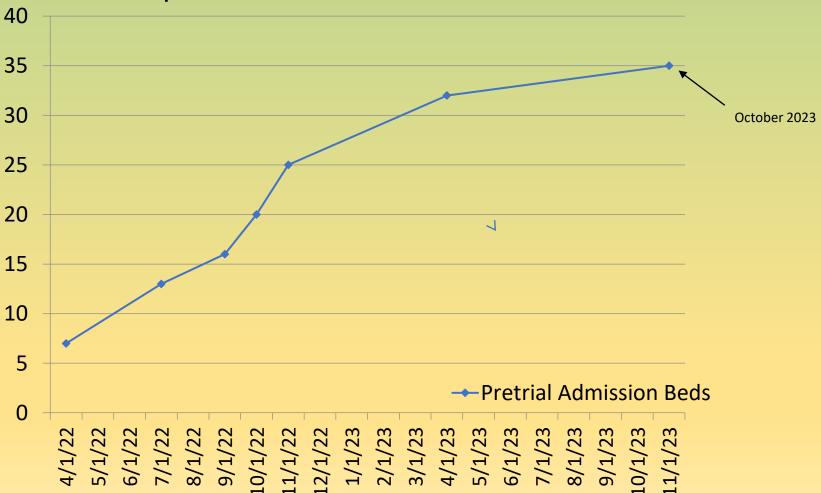
Insanity in MS refers to a defendant's mental state at the time of an alleged offense. A defendant may be found Not Guilty by Reason of Insanity (NGRI) if at the time of an alleged offense, because of a mental disease or defect, he/she either:





Alleged offense

DMH Forensic Pretrial Admission Beds



Occupied Male Beds for Pretrial Admissions

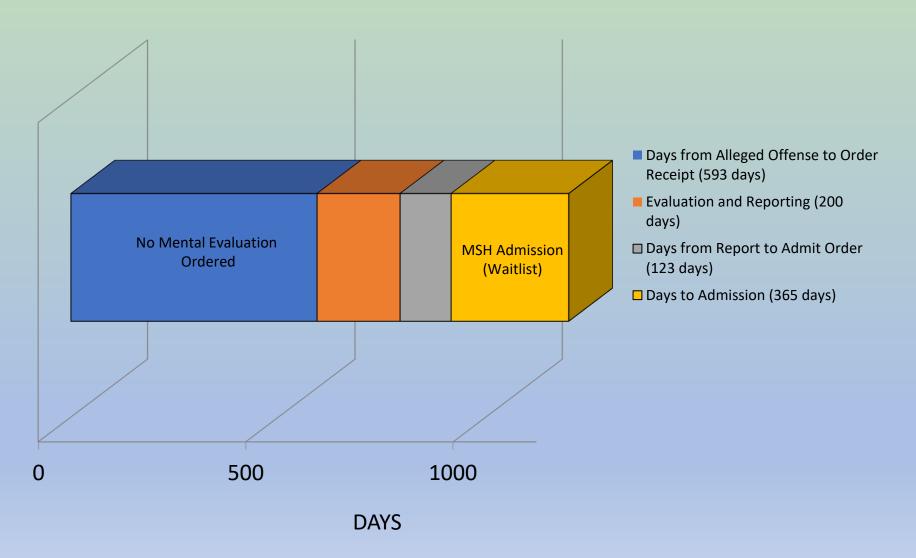
Stage 1a and 2 (Admissions) Waiting in Jail April 2022 – October 2023

In Jail Awaiting Admission

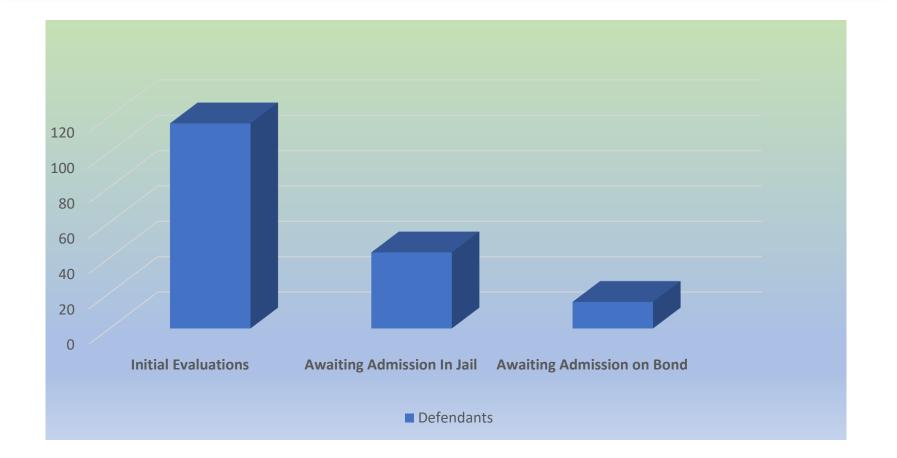


Indviduals Awaiting Admission (Jail)

Time from Alleged Offense to Admission 2022



Where Are They? (October 2023)



Total Initial Evaluation Orders Received

- Outpatient Evaluations
- Continuing to increase



YOU'RE NOT ALONE

WHAT FOTOLD YOU

Delay in mental health restoration for defendants in WA risks public safety The Seattle *Times*; Updated Feb. 27, 2023 at 5:05 pm

- Trueblood et al v. Washington State DSHS (2015) – requires the state to provide court-ordered competency evaluations within 14 days and to begin providing competency restoration services no later than 7 days after the evaluation.
- The wait time for the state's competency restoration services is the longest it's ever been — frequently 10 months or more.
- Last summer, a 63-year-old nurse was violently assaulted and thrown down the International District/Chinatown light rail station stairs. The defendant — charged with that attack, another felony assault, and a separate murder hours later — was found mentally incompetent to stand trial.
 - The defendant has been awarded \$60,000 (and counting).

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LOCKED UP FOR THREE DECADES WITHOUT A TRIAL

A New York City man has been shuffled between Rikers Island and mental hospitals for 32 years.



Illustration by Michelle Mildenberg

George Joseph, Simon Davis-Cohen Jun 21, 2018



A broken system: Colorado struggles to uphold laws requiring timely mental competency service for detainees, despite losing lawsuits and years of failure – January 31, 2020

- CO has been involved in litigation since 2011
- Despite multiple court orders to reduce the backlogs, pre-trial detainees who require mental competency evaluations and treatment are consistently languishing in Colorado jails or the state mental hospital in Pueblo, often for weeks or even months at a time, in violation of state laws and the U.S. Constitution.
- Quote from an administrator from CO DMH - "We can do better."

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A broken system: Colorado struggles to uphold laws requiring timely mental competency service for detainees, despite losing lawsuits and years of failure

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John Ferrugia • Published on January 31, 2020 • Last modified on April 13, 2020

GOVERNMENT HEALTH

Mentally ill Coloradans await care in jail for months. Could a new effort clear the backlog?

Bill would use federal stimulus money to add 141 residential behavioral health beds BY: FAITH HILLER - MAY 23, 2022 5:00 AM





'This is a crisis.' Lawmaker seeks transfer deadline for state hospital waitlist

by: <u>David Barer</u> Posted: Mar 22, 2023

- "...the deadline will be the impetus – the fire at the feet of the Health and Human Services agency – to do their job."
- In December, the average wait for a maximum-security bed was 699 days, and the average for a non-maximum security bed was 227, according to state data.

Forensic Trends and National Data - 2023

- Nationwide competency restoration crisis
 - Litigation
 - Increasing evaluators
 - Unrealistic workload
 - Quality assurance
 - Telehealth evaluations
 - Jail-based competency restoration
 - Waitlists remain
- Does anything work?

LAW AND CRIME

Fixing the Competence Restoration Process

State legislatures fail jail detainees with delayed competency restoration.

Posted May 19, 2023 | 🛛 Reviewed by Ekua Hagan



KEY POINTS

- State legislatures are failing jail detainees who wait too long for competency restoration.
- Attorneys in multiple states have taken action to pursue remedies for these persons awaiting trial.
- · Jails cannot function as mental health facilities.

"The most tragic aspect of this crisis is that the massive efforts to admit and restore patients are ultimately a waste of expensive clinical resources without improving the trajectory of a person's life. After returning to jail and standing trial, they are most likely worse off: either released without resources to the same circumstances that precipitated arrest or incarcerated." – Dr. Katherine Warburton, Medical Director, California State Hospitals

Hope is not a plan

- Recap
 - There are problems with provision of Forensic Services in MS
 - Other, better resourced states also have problems
 - Litigation doesn't (always) solve it and may have unintended consequences
- No one is coming to save us; it's up to us
 - We can design something that works for MS
 - This will take collaboration
 - You can't always get what you want
 - But if you try sometimes, you get what you need

What's the Best Use of Scarce Resources?

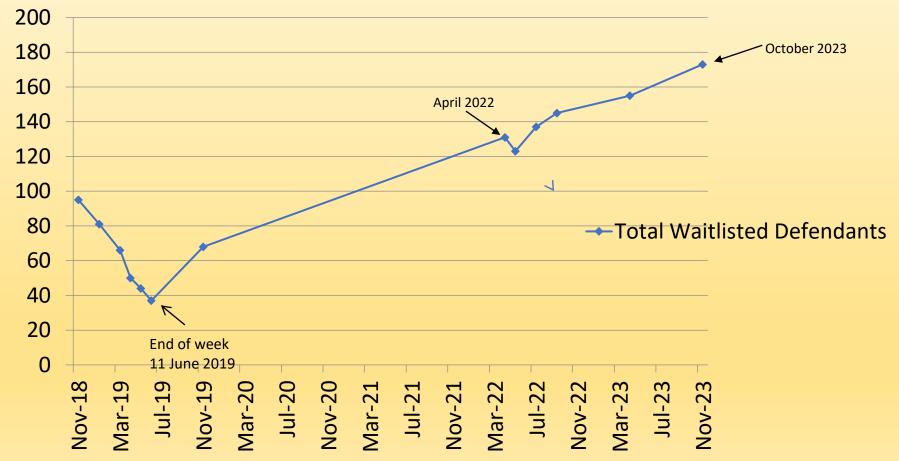






Total (All Categories) on Waitlist October 2023

Total Waitlisted Defendants

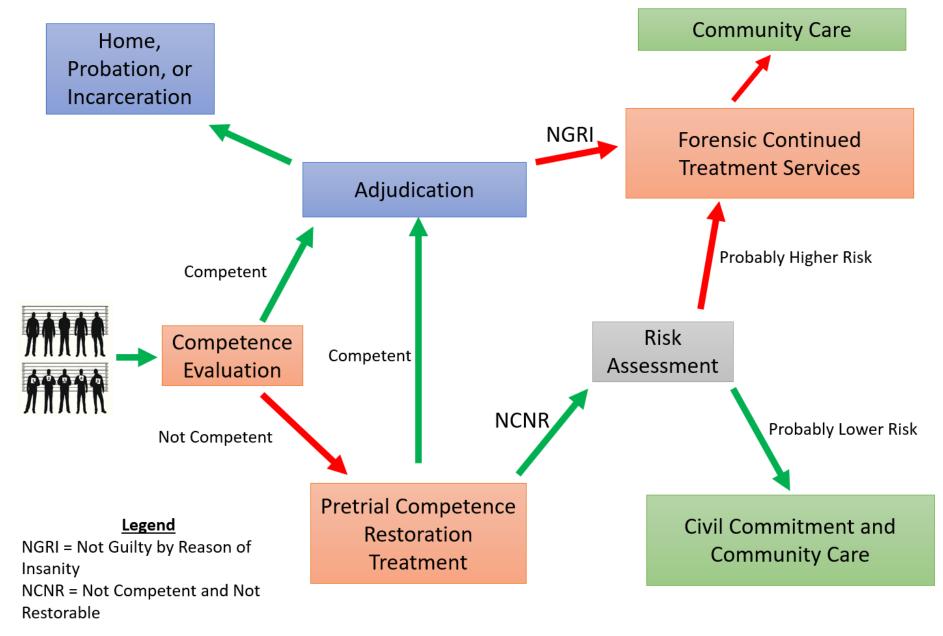


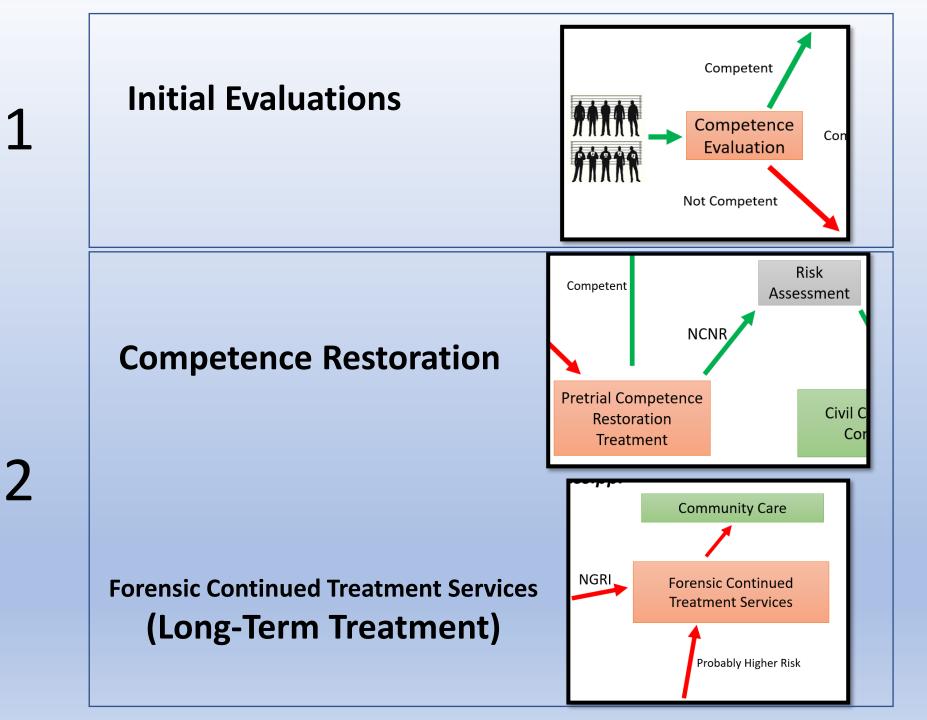
Defining Our Scope (Forensic Services in MS)

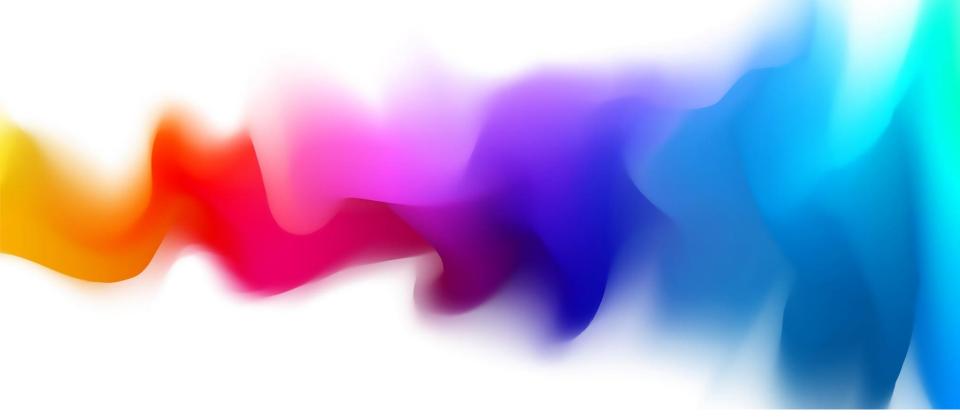
- Who do we treat?
 - Felony pretrials for restoration (PRETRIAL)
 - Insanity Acquittees (NGRI)
 - High-Risk Unrestorable SMI Individuals (HRNCNR)*:
 - All Murder
 - Rape (Predatory sexual behavior probably)
 - Arson (probably)
 - Assault with a deadly weapon (probably)
- This definition is accurate, but not precise

*Not a legal definition in MS

Forensic Mental Health Services in Mississippi







Part II: Getting Folks Evaluated - Evaluations -

Forensic Services 2.0: From Tradition to Transformation

INITIAL EVALUATIONS **Traditional Way ORDERS FOR OTHER STUFF** Who performs initial ORDER FOR COMPETENCE evaluations? **EVALUATION Forensic Evaluation** Service (FES) at MSH **Contract Evaluators** (psychologists) for MSH Competent Alleged Offense **Privately retained** evaluators for Counties Competence

Com

Evaluation

Not Competent

- Other licensed doctorate level professionals
- Sometimes counties pay; usually MSH pays
- Other Stuff:
- Violence Risk
- Delayed Adjudication
- Shenanigans

Clear Solutions*

Solutions Internal to DMH

- Recruiting more evaluators; avoid substandard practices
- Create a more streamlined process for stakeholders
- Improve communication
- Appropriate incentives

Solutions External to DMH

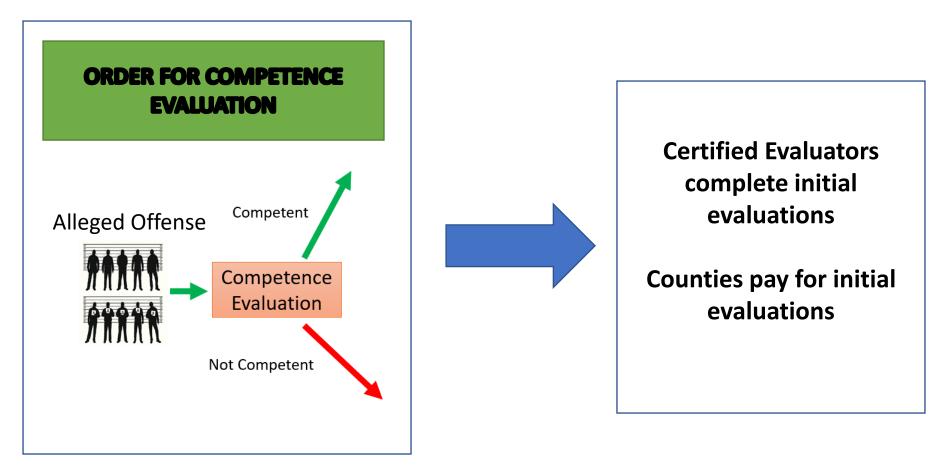
- Competency dockets, calendars, and/or teams
- Avoiding unnecessary evaluations
 - Diversion
 - Restrict competency evaluation referrals
- Timely competency hearings

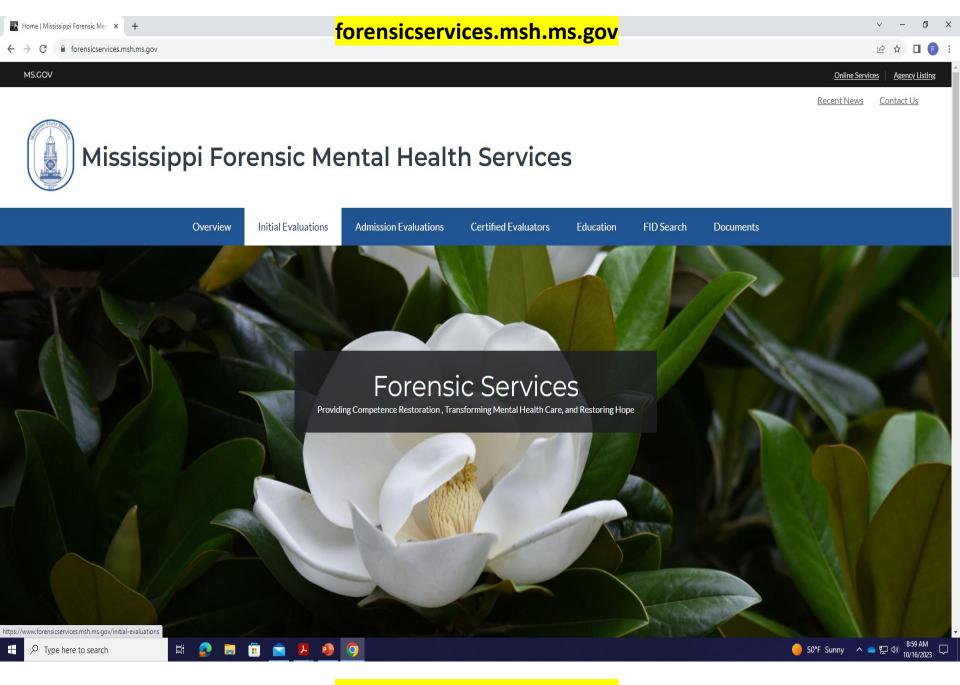


Mental Health Law and Court Procedure

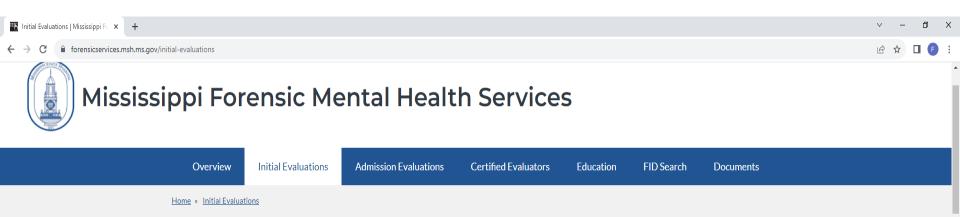
- MS Forensic Mental Health Act of 2019:
 - DMH "shall" publish standards for evaluator certification
 - DMH "shall" publish a list of certified evaluators
 - Counties to pay for the evaluations
- MRCrP 12.3(e) Costs. Any cost or expense in connection with the court-ordered mental examination(s) shall be paid by the county in which such criminal action originated.

INITIAL EVALUATIONS





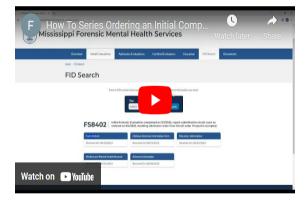
forensicservices.msh.ms.gov



Initial Evaluations

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Start Here:



The Mississippi Department of Mental Health (DMH) and Mississippi State Hospital (MSH) are actively expanding services to effectively address the needs of patients and stakeholders within the forensic mental health and criminal justice system. As part of this commitment, MSH is allocating resources towards the ongoing development of its inpatient services. Consequently, MSH has made the strategic decision to discontinue conducting initial (outpatient) forensic mental evaluations. By redirecting our focus, we aim to enhance the quality and efficiency of the specialized services for individuals involved in the criminal justice system.

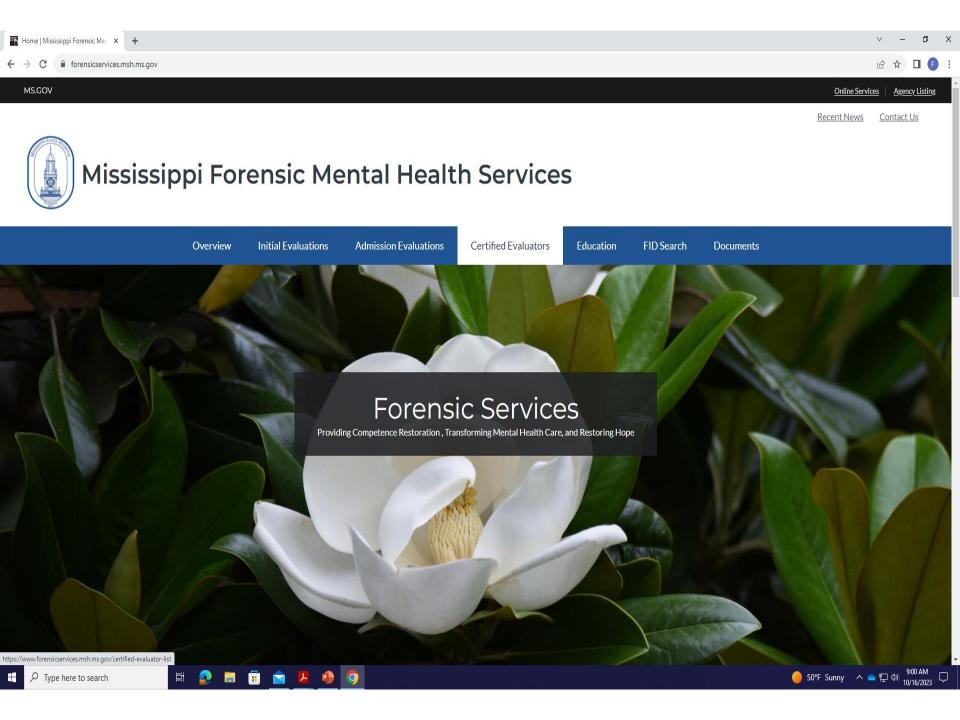
This change will occur on 1 November 2023. Evaluations ordered prior to 1 November 2023 will be completed consistent with previous practices (e.g. outpatient evaluations completed at MSH or by telemedicine at no cost to counties).

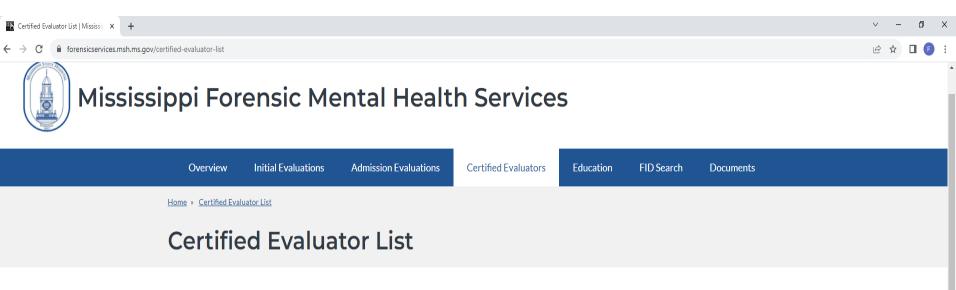
Because the Forensic Evaluation Service (FES) at MSH will no longer conduct initial evaluations of competence to proceed legally. County and Circuit Courts in Mississippi have

8:55 AM

10/16/2023

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The following psychologists and psychiatrists have completed the requirements to be a certified forensic evaluator in Mississippi.

Psychologists

Ashley B. Batastini, Ph.D., Batastini CV

David W. Gavel, Ph.D., Gavel CV

Amanda L. Gugliano, Psy.D., Gugliano CV

Stephanie M. Howard, Psy.D., Howard CV

William Criss Lott, Ph.D., Lott CV

Robert M. Storer, Ph.D., Storer CV

Psychiatrists

John Montgomery, D.O., Montgomery CV

.

Thomas V. Recore, M.D., Recore CV

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MS Department of Mental Health (DMH) and Mississippi State Hospital (MSH) Certified Forensic Mental Health Examiner Requirements (2023)



Initial Evaluations

Pathway 1 – DMH Supported

- County sends form order to: <u>forensic.orders@msh.ms.gov</u>
- Forensic ID (FID) number assigned and shared with Court, Sheriff, DA, Defense, Clerk
- Documents shared with DMH
- Case assigned to certified evaluator
- Report completed; County invoiced for evaluation
- Max \$2000 comp & \$3000 combined comp/sanity
- Testimony paid for by County at hourly rate

Pathway 2 – County Sourced

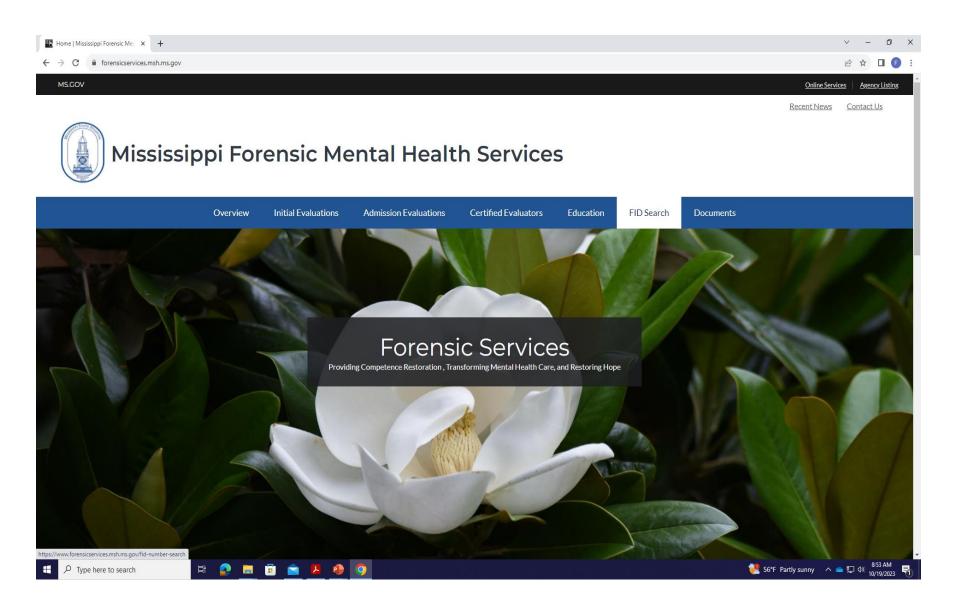
- County orders evaluation using privately retained evaluator
- Record requests, data gathering, etc. negotiated by Court
- Evaluation completed; Payment arrangement negotiated by privately retained evaluator and Court
- Testimony paid for by County at hourly rate

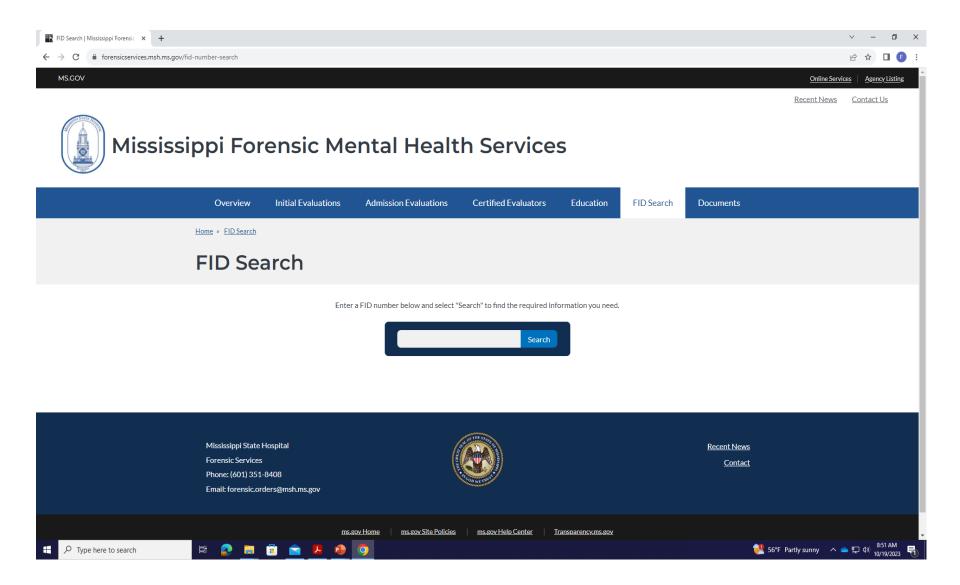
Initial Evaluations

Pathway 1 – DMH Supported

Anticipated Challenges

- All certified evaluators are licensed to practice psychology or psychiatry in MS
 - Not all are willing to provide evaluations at set rate
 - Maintaining quality evaluations
- Some certified evaluators live out of state
 - Expect some simple logistical hurdles with telehealth evaluations and/or testimony
- Cases not assigned to certified evaluators until minimally required info has been received
 - FID Search will improve processes
- Expect some logistical hurdles with payments





Enter a FID number below and select "Search" to find the required information you need.



Home » FID Search

FID Search

Enter a FID number below and select "Search" to find the required information you need.



FS8402 Initial Forensic Evaluation completed on 9/1/2023, report submitted to circuit court as ordered on 9/4/2023. Awaiting admission order from Circuit Court.

Form Orders	Defense Attorney Information Form	Discovery Information
Received On: 08/20/2023	Received On: 08/22/2023	Received On: 08/23/2023
Medical and Mental Health Records	Attorney Attestation	

November 1st, 2023

Prioritizing



Evaluations ordered through October 31st, 2023, will be completed by staff and contract evaluators at Mississippi State Hospital (MSH) at no charge to counties.



Beginning on November 1st, 2023, MSH no longer conducts initial evaluations of competence or sanity.

MSH provides administrative assistance



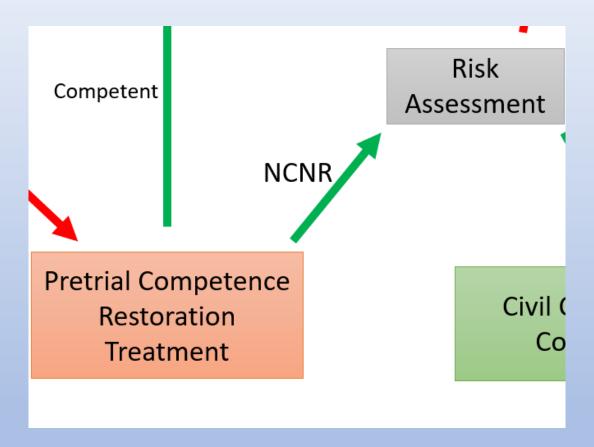
MSH-employed evaluators will be eligible to conduct initial evaluations as independent certified evaluators. However, this will not occur until all evaluations ordered prior to November 1st have been completed.



Part III: Getting Folks Treated - Admissions -

Forensic Services 2.0: From Tradition to Transformation

Admissions to Forensic Services

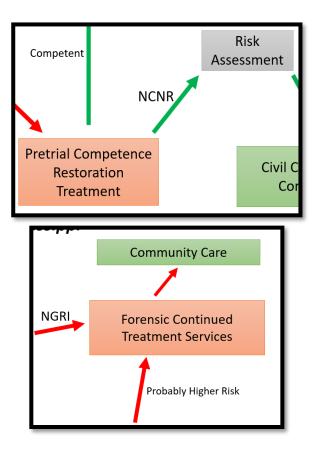


Who? How? Where? What?

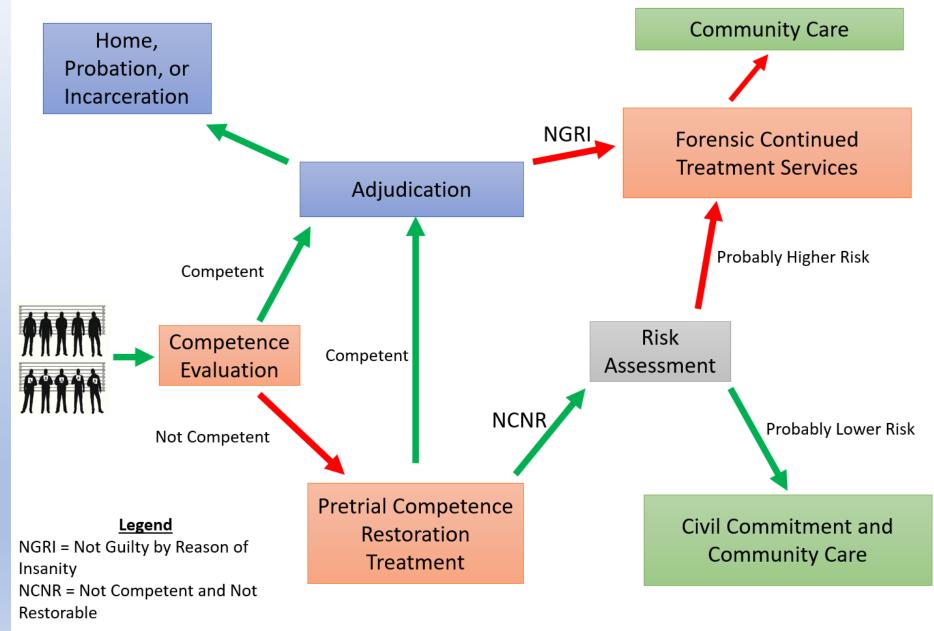
FORENSIC SERVICES ADMISSIONS

Competence Restoration Treatment and Inpatient Forensic Evaluation

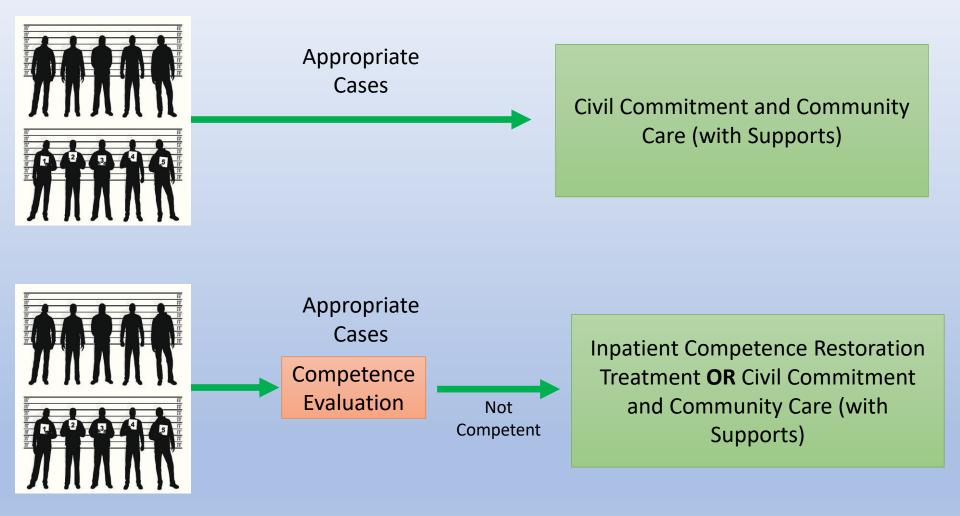
Forensic Continued Treatment Services (Long-Term Treatment)



Forensic Mental Health Services in Mississippi



State Hospital Services in Mississippi



Is Competence Restoration Treatment Always the Answer?

Restoring Mental Competency: Who Really Benefits?

BY TCR STAFF ③ 14 MINS READ

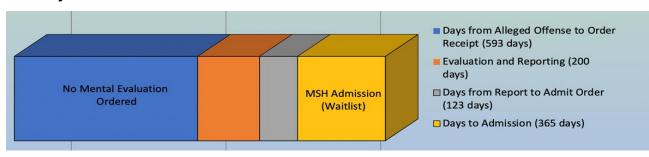
AUGUST 8, 2018



"Competency restoration is not treatment...it's not about recovery, it's not about getting well so that you can get out. It's about restoring you so that you can be tried." – Honorable Steve Leifman, Associate Administrative Judge, Eleventh Judicial Circuit Court of Florida and creator of the Criminal Mental Health Project.



"In some circumstances, it may be appropriate to take competency off the table as a policy matter, by rule or by statute, and several jurisdictions currently prohibit the use of the restoration process for certain classes of pretrial detainees."



forensicservices.msh.ms.gov/admission-evaluations



Mississippi Forensic Mental Health Services

Initial Evaluations Admission Evaluations

Certified Evaluators Education **FID Search** Documents

Home » Admission Evaluations

Overview

Admission Evaluations

The Mississippi Department of Mental Health (DMH) and Mississippi State Hospital (MSH) provide inpatient treatment, inpatient forensic evaluation, and testimony regarding defendants who have been evaluated by a licensed psychologist or psychiatrist and adjudicated as incompetent to proceed legally. The cost for this treatment, evaluation, and testimony is currently borne by DMH and MSH.

Inpatient Forensic Services at Mississippi State Hospital (MSH) are available for criminal-court involved individuals in Mississippi:

- 1. Pretrial defendants who have been adjudicated by a Mississippi Court as incompetent to proceed legally, and are in need of inpatient treatment for competence restoration, and
- 2. Pretrial defendants adjudicated by a Mississippi Court as Not Guilty by Reason of Insanity (NGRI), and are considered by the Court to need inpatient treatment until such time that they are restored to reason and no longer dangerous to the community, and
- 3. Individuals who are considered to be extremely high-risk mentally ill individuals. This category is generally reserved for individuals who have been previously referred to inpatient forensic services for competence restoration on violent charges, but have been determined to be not competent and not restorable and referred for civil commitment.

Documentation requirements for admission evaluations are the same as for Initial evaluations. If necessary documentation was provided to the Forensic Evaluation Service (FES) as part of an initial evaluation order, then no additional documentation is required with the Order for admission. If the initial evaluation that determined incompetence for a defendant was completed by an evaluator without FES involvement, then the information requirements are the same as for an initial evaluation, namely:

1. A copy of this order and any and all related motion(s), exhibit(s) and materials Admission Order Template;

2. A completed Patient Information Form (PIF) as provided by Forensic Services at Mississippi State Hospital Patient Info Form;

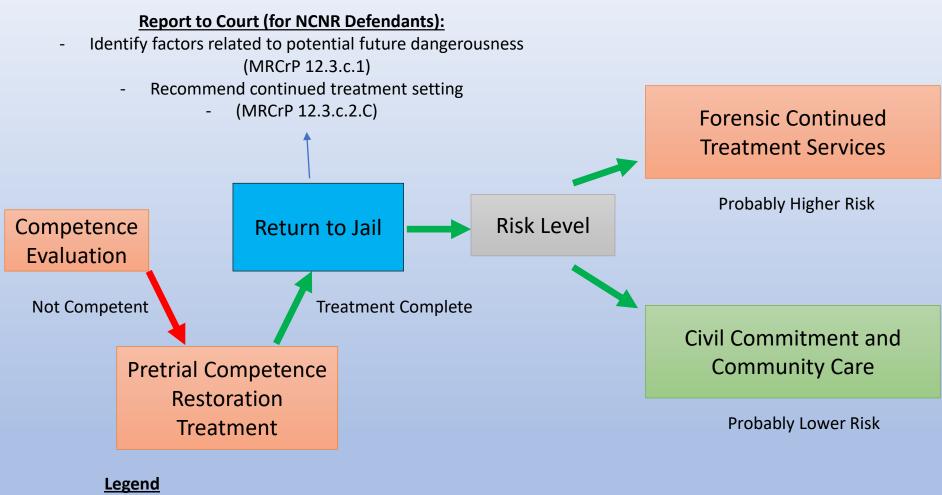
3. Information concerning the alleged crime(s) and legal history, including:

1. Discovery Materials; Indictment; name(s) of the charge(s); date(s); accounts of the alleged crime(s) including investigators' report(s); arrest report(s); any statements made by witnesses, victims, and Defendant;

2. A copy of the Defendant's prior local arrest record and N.C.I.C. or F.B.I. Identification report;



Forensic Mental Health Services in Mississippi



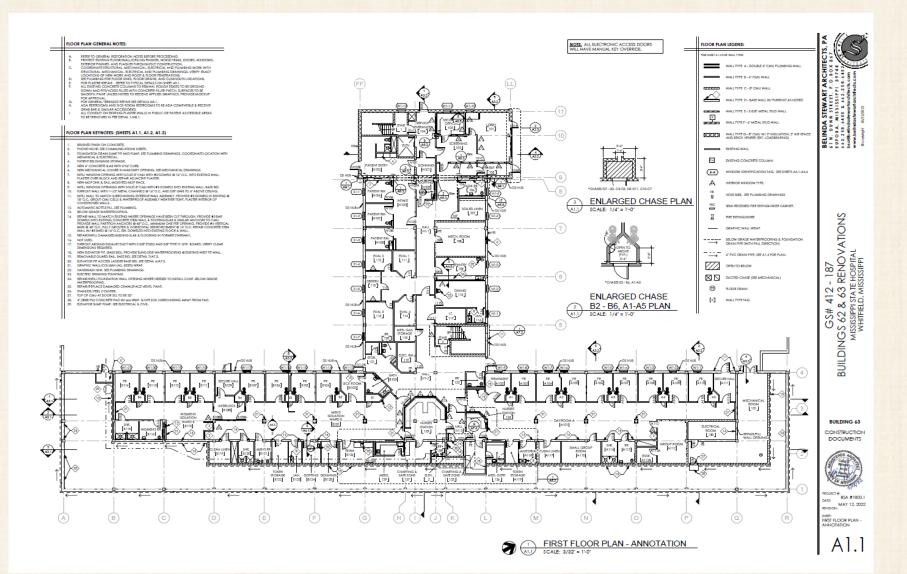
NGRI = Not Guilty by Reason of Insanity NCNR = Not Competent and Not Restorable

80 Bed Maximum Security Building – Fall 2024

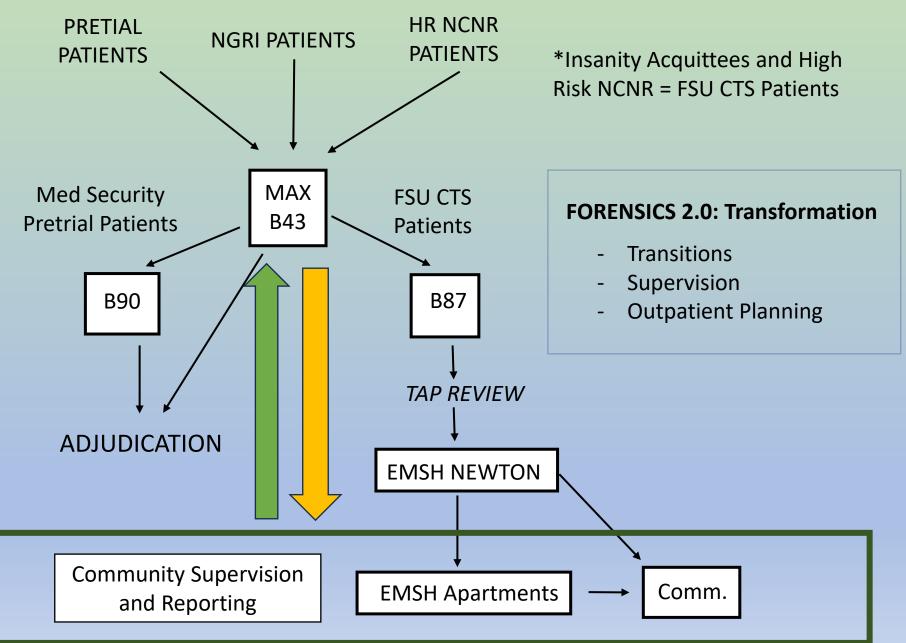
Total Forensic Census at MSH:

- Now: **65**
 - (25 Maximum Security)
- Future: **120**
 - (80 Maximum Security)
- Staffing PLEASE

80 Bed Maximum Security Building – Fall 2024



Forensic Services Stratification in MS



Questions?

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