

# Welcome

Administrative Office  
of the  
Illinois Courts

## **Rethinking the Intersection of Competency to Stand Trial, Competency Restoration, and Mental Health Systems**

**ACMHAI Meeting  
January 29, 2025**



# *Dusky v. U.S. (1960)*

In order for a defendant to be found competent to stand trial, a defendant must have a

“sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding”

*and* a "rational as well as factual understanding of the proceedings against him.”

# **725 ILCS 5/104-10 *et seq.***

Fitness Act provides procedures for:

- Initial considerations of fitness
- Fitness determinations
- Periods of treatment
- Restoration to fitness

# Fitness Presumption

725 ILCS 5/104-10

A defendant is ***PRESUMED*** fit to stand trial and/or plead, or be sentenced

# **Defendant unfit if...**

**725 ILCS 5/104-10**

- Because of mental or physical condition,
- is unable to understand the nature and purpose of the proceedings against them
- or to assist in their defense.

# **Fitness of Defendant Raised**

**725 ILCS 5/104-11**

- State, Defense Counsel, or the Court may raise a question of defendant's fitness
- Can be prior to trial and/or plead, or even up to sentencing
- Trigger is that Court finds a “bonafide doubt”
- Fact specific

# Fitness Determination

725 ILCS 5/104-12, 13, 14, 15, 16

- If Court finds a ‘bonafide doubt’:
  - Judge order a fitness evaluation
  - Criminal case is put on pause
  - Fitness evaluation within 30 days
  - Fitness hearing within 45 days of receipt of fitness eval

# Method of Treatment

725 ILCS 5/104-12, 13, 14, 15, 16

- Court shall select:
  - the least restrictive form of treatment
  - therapeutically appropriate
  - and
  - consistent with the treatment plan.
- May be inpatient or outpatient

# Inpatient Finding

725 ILCS 5/104-17

- DHS has 60 days to accept defendant to their facility
- If placement cannot be made within 60 days, DHS must show
  - good faith efforts at placement
  - and a lack of bed and placement availability
- The Department shall provide an update to the ordering court every 30 days until the defendant is placed.

# Immediate Transport Order

725 ILCS 5/104-18(c), 20(e)

Whenever the court receives a report from the supervisor of the defendant's treatment ... the court *shall immediately*

enter an order directing the sheriff to return the defendant to the county jail and set the matter for trial.

# National Outlook

**“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.”**

DR. KATHERINE WARBURTON, MEDICAL  
DIRECTOR, CALIFORNIA STATE HOSPITALS

**“It has cost us more than \$300,000 to try to restore competency to a young woman on my docket. And yet, when her charges are dismissed, she will have no housing and no community supports or services.”**

HONORABLE NAN WALLER, CIRCUIT COURT  
JUDGE, MULTNOMAH COUNTY, OREGON

**During the pandemic, the number of cases along with waits have skyrocketed and the failings of the current approach to CST have gained increased national attention. This trend started pre-pandemic as NASMHPD surveyed its members and reported an average 72-percent overall increase in the number of people receiving competency restoration services in state hospitals from over the past 20 years.**

Hallie Fader-Towe and Ethan Kelly, *Just and Well: Rethinking How States Approach Competency to Stand Trial* (New York, NY: The Council of State Governments Justice Center, 2020).



# Just and Well:

## Rethinking How States Approach Competency to Stand Trial

October 2020



NATIONAL JUDICIAL TASK FORCE TO EXAMINE STATE COURTS' RESPONSE TO MENTAL ILLNESS

## Leading Reform: Competence to Stand Trial Systems

A Resource for State Courts<sup>1</sup>

August 2021 v2

### THE ISSUE

The majority of state hospitals maintain bed-wait lists of defendants who have been court-ordered for competency to stand trial evaluation or restoration services. A 2017 report found that in some states these waits are around 30 days, but three states reported forensic bed waiting lists of six months to a year. At any given time, there were at least 2,000 defendants waiting in jail for these beds.<sup>2</sup> During the pandemic these waits have skyrocketed, and in just three states combined, over 3,000 people were reported waiting in jail for a restoration bed. These are pre-trial defendants, sometimes charged only with misdemeanor offenses, all of whom are presumed innocent. And yet, many of them will spend far longer in jail or otherwise confined than they ever would have had they pled to or been convicted of the underlying offense.

### BACKGROUND

Of the countless ways in which mental illness and the justice system intersect, one of the most direct is when courts and judges are involved in an order for evaluation and ultimate determination of a defendant's competency to stand trial.<sup>3</sup> Any defendant, their counsel, the prosecutor, or the court can raise a concern that the defendant may be incompetent to stand trial in any criminal proceeding, from misdemeanors to capital murder. The United States Supreme Court in *Dusky v. U.S.* (1960) held that in order for a defendant to be found competent to stand trial, a defendant must have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and a "rational as well as factual understanding of the proceedings against him."

If incompetence is raised, the defendant is evaluated by a mental health professional; and based on that evaluation (or evaluations) and other information, the court makes a determination of legal competency. If an individual is found incompetent, a process of restoration to competency generally commences.



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**DIVISION OF  
MENTAL HEALTH**

“Since 2020, the number of forensic referrals from the courts has doubled and as a result, we are seeing an unprecedented number of individuals waiting for inpatient admission.”

“Since the pandemic, the courts have dramatically increased forensic referrals from a monthly average of roughly 50 prior to 2020, to, most recently, a high-water mark of 120 in May.”

# Illinois Outlook



2023 total State Hospital  
beds: 1,359



Civil beds: 407



Forensic beds: 952



2023 beds per 100,000  
people in Illinois: 10.8



A minimum of 50 beds  
per 100,000 people is  
considered necessary to  
provide minimally  
adequate treatment

Retrieved from [https://www.treatmentadvocacycenter.org/map\\_directory/Illinois/](https://www.treatmentadvocacycenter.org/map_directory/Illinois/)

# Illinois Outlook

- Cook County Example: one man was arrested over 150 times and went through the CST process 4 times.
- When looking at **only his fourth CST** process, jail costs plus costs associated with competency evaluation and restoration totaled almost **\$150,000**.
- This money was spent simply to position him to face his misdemeanor charges, without addressing the chronic nature of his mental health condition or the other factors driving his criminal justice involvement.

Ret. Judge Sharon Sullivan, “Cook County Fitness Diversion Pilot Project 2020”

| Year | CST waiting for inpatient tx |
|------|------------------------------|
| 2019 | 83                           |
| 2020 | 109                          |
| 2021 | 128                          |
| 2022 | 195                          |
| 2023 | 178                          |
| 2024 | 233                          |

# Public Act 102-913 (405 ILCS 140)



**DIVISION OF  
MENTAL HEALTH**

Mental Health Inpatient Facility Access Act...mandated that the Department of Human Services' Division of Mental Health (DMH) develop a written, strategic plan that comprehensively addresses improving access to inpatient psychiatric beds in State-operated mental health facilities for individuals needing a hospital level of care.

[Strategic Plan for Inpatient State-Operated Psychiatric Hospital Capacity and Access](#)

# DHS Inpatient Forensic Programs

## REGIONS 1 & 2

Elgin Mental Health Center (400 beds)  
Min & Med Security & Dually Diagnosed (Males/Females)

Chicago Read MHC (74 beds)  
Min Sec & Dually Diagnosed (Males/Females)

Ingalls Behavioral Hospital (24 beds)  
Min Sec & Dually Diagnosed (Males/Females)

Streamwood Hospital (12 beds)  
12-17 y/o adolescents (Males/Females)

## REGIONS 3 & 4

Packard Mental Health Center (100 beds)  
Min & Med Security & Dually Diagnosed (Males/Females)

## REGION 5

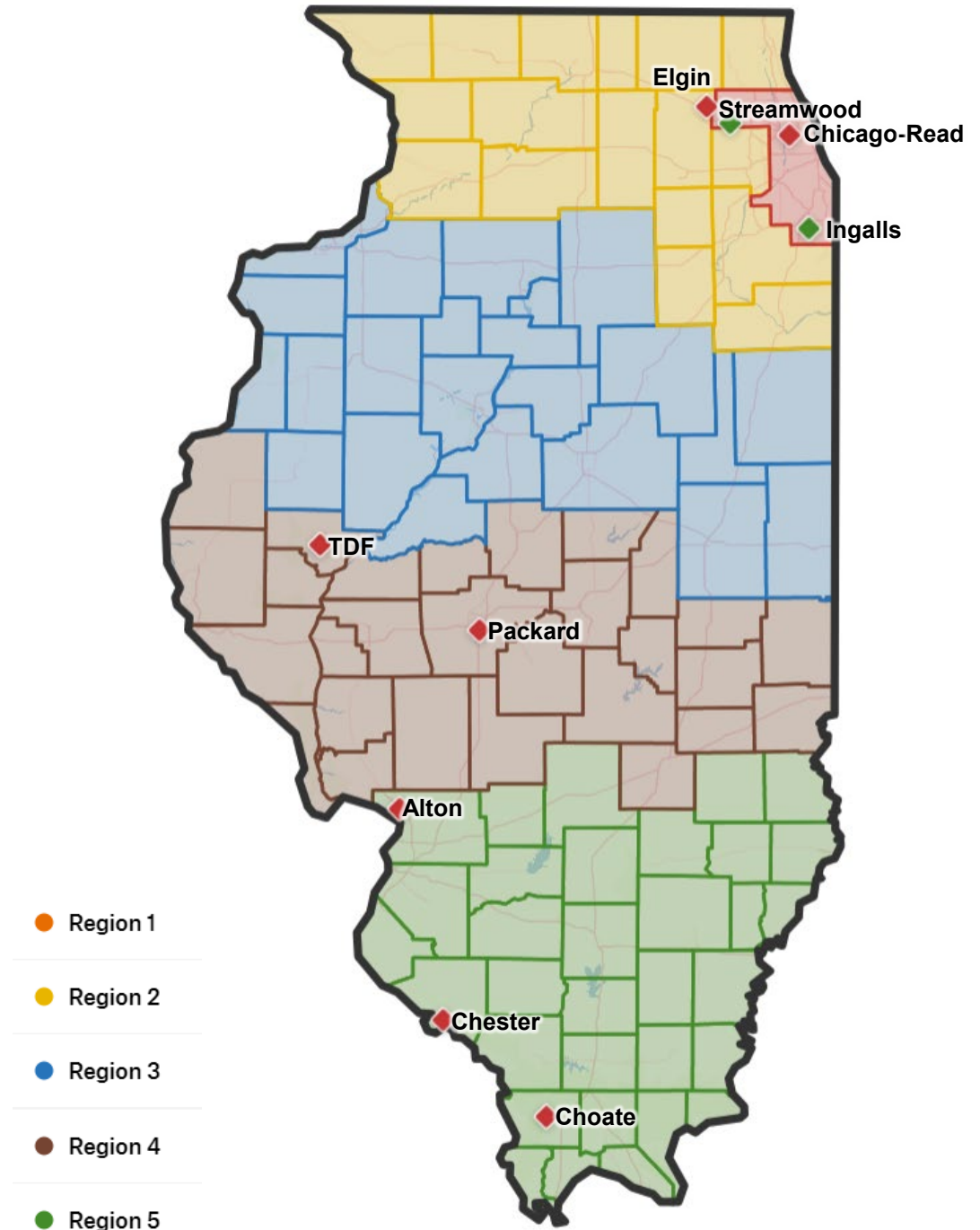
Alton Mental Health Center (115 beds)  
Min & Med Security & Dually Diagnosed (Males/Females)

## STATEWIDE

Chester Mental Health Center (217 beds)  
Med/Max Security & Dually Diagnosed (Males)

Choate DD/Forensic (IDHS-DDD) (42 beds)  
Med Security, Developmentally Disabled (Males)

Treatment and Detention Facility (TDF) (500+ beds)  
Individuals committed under SVP statute



# Outpatient Services

## REGION 1

**The Chicago School Forensic Center (Cook)**

## REGION 2

DuPage County Health Department (DuPage)

Ecker Center for Mental Health (Kane)

Kendall County Health Department (Kendall)

Lake County Health Department (Lake)

Stepping Stones of Rockford (Winnebago)

Sinnissippi Centers (Lee, Ogle, Whiteside, Carroll, Jo Daviess, Stephenson)\*

## REGION 3

Bridgeway Inc. (Knox, Warren, Henry, Henderson, McDonough)

Human Service Center/UnityPoint (Peoria)

Iroquois Mental Health Center (Iroquois, Champaign, Jackson, Vermillion)

Robert Young Center (Rock Island)

## REGION 4

Heritage Behavioral Health Center (Macon)

## REGION 5

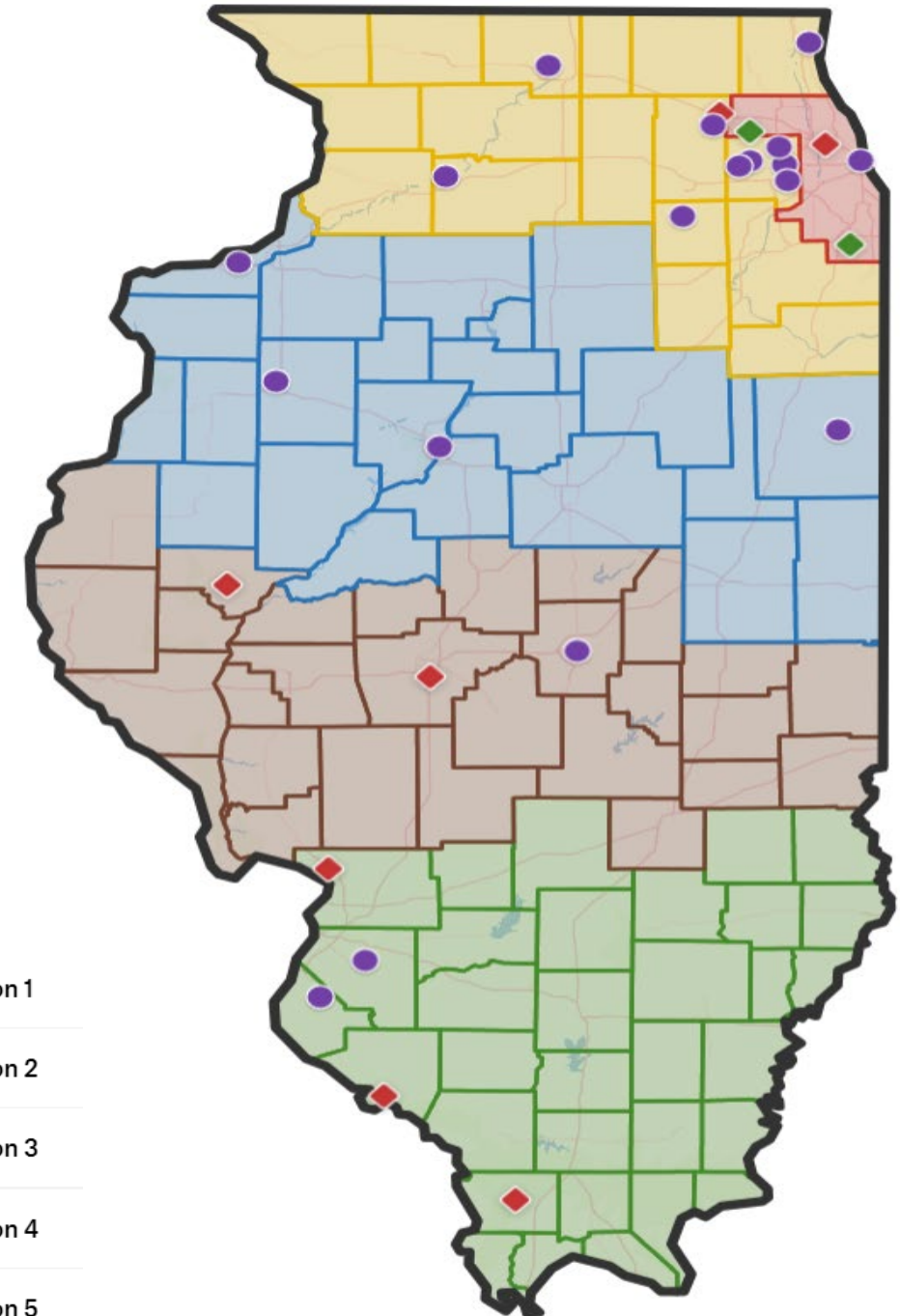
Adapt of Illinois (St. Clair)

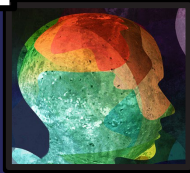
Arrowleaf (Alexander, Massac, Hardin, Pope, Johnson, Pulaski, Union)

Human Support Services (Monroe, Randolph, St. Clair)

- Region 1
- Region 2
- Region 3
- Region 4
- Region 5

\*not DHS funded





## Leading Reform: Competence to Stand Trial Systems

### QUESTIONS STATE COURT LEADERS SHOULD ASK FIRST

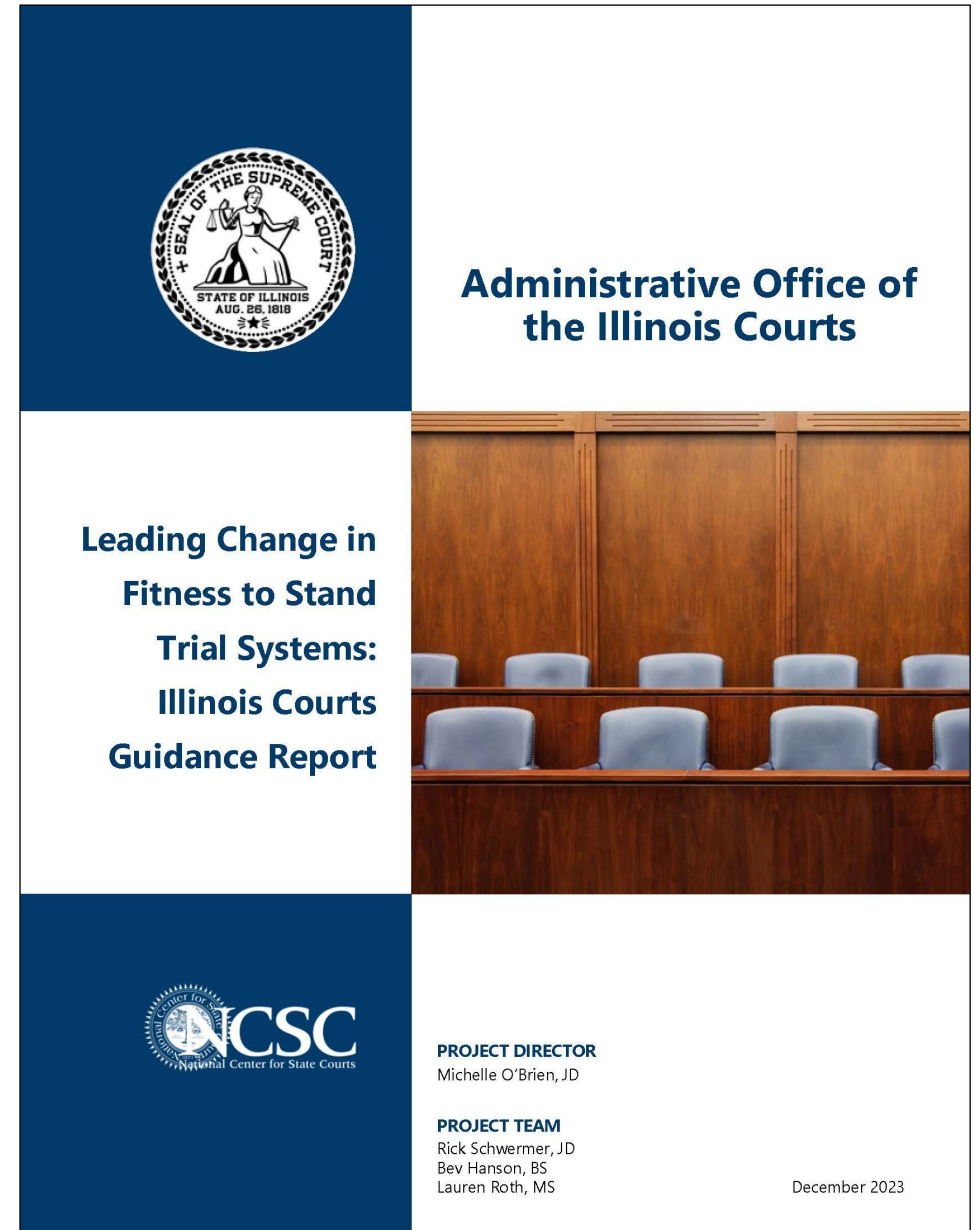
As state courts consider initiating reform in their competency to stand trial systems, they should first be sure that they have a clear understanding of how the current system operates. This system survey should provide a consensus vision of current system gaps, strengths, and weaknesses as measured against the Task Force recommendations. Chief Justices and other partner entities should ask the following questions about current policies (statutes and rules), and procedures. Note that there may be NCSC resources available to assist states in identifying answers to these questions.



1. Are there exclusions for charges/offenses that are eligible for referral to the CST process?
2. How many competency evaluations are required?
3. What requirements pertain to the content and format of the evaluations?
4. What are the relevant required timelines for: CST being raised to adjudication, from referral for evaluation to report submission, from adjudication to initiation of restoration services, from commencement of restoration services to court review, the frequency of court reviews, and what are the time limits on the length of restoration?
5. What are the requirements and options at the end of that restoration period and in the event of a determination of non-restorability?
6. Are there legal presumptions for the location of CST evaluations? For the location of CST restoration?

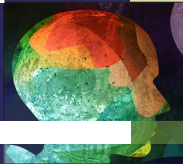
# Leading Change in Fitness to Stand Trial Systems: Illinois Courts Guidance Report

AOIC and Special Supreme Court  
Advisory Committee for Justice  
and Mental Health Planning



BEHAVIORAL HEALTH  
State Court Leadership Brief

October 2022



# Competency to Stand Trial System Assessment Tool

Court orders to assess competency in criminal court proceedings, also termed fitness to proceed, represent the most frequently ordered mental health evaluation by criminal courts, with more defendants ordered to competency evaluations and restoration than ever before. This is especially true for misdemeanor defendants who not only comprise the largest proportion of competency evaluations but are also found incompetent at higher rates than felony defendants. As a result, the number of evaluations often exceeds resources, which in turn has generated long wait lists. Indeed, some waitlists have grown so lengthy and wait times so long (more than one year, in some cases), that defendants frequently spend more time in jail awaiting competency services than they otherwise would have served in jail if found guilty.

In 2021, the National Judicial Task Force to Examine State Courts' Response to Mental Illness listed case processing in criminal competency cases as a national priority. The [Competency to Stand Trial Court System Assessment Tool \(CST2\)](#) is designed for judges and court personnel to examine the status of practices, policies, and resources in their jurisdiction relating to competency to stand trial (CST)/fitness to proceed and related behavioral health systems.

The information gained from completing the CST2 assists courts in developing and prioritizing strategies in competency, beginning with crisis response, opportunities for deflection and diversion, and concluding with successful reentry.

THE CST2 ASSESSES FIVE CENTRAL AREAS

|                                                                                       |                                                                                       |                                                                                       |                                                                                       |                                                                                       |
|---------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
|  |  |  |  |  |
| Deflecting and Diverting Cases from CST Systems                                       | Expanding Community-based Services and Support                                        | Developing Alternative Sites                                                          | Improving Case Management                                                             | Improving Systems and Building Capacity                                               |

# Proposed Actions and Implementation Guidance



State Court: Convene Key Stakeholders



Trial Courts: Complete the Fitness to Stand Trial Court Self Assessment Tool (CST2).



Local Communities: Conduct Sequential Intercept Mapping



AOIC: Explore Data and Reporting Improvements



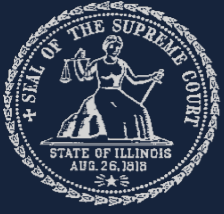
JMHP: Update the Fitness To Stand Trial “Specialized Manual”



AOIC, IDHS, APA, IPS: Increase Training Opportunities



All: Enhancing Court and Justice Partner Collaborations

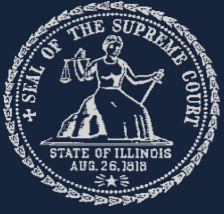


# Identify and Prioritize Policy and Practice Improvements

Administrative Office  
of the  
Illinois Courts

- **Courts:** Jury Instructions, Uniform Orders, Self-Assessment, Judicial Training, Data Monitoring, Diversion
- **IDHS:** Improve throughput, Increase Beds, Expand Outpatient Access, Create Alternatives
- **Forensic Workgroup:** Multidisciplinary Training, Best Practice Evaluation Template, Explore Evaluator Certification Partnership with AOIC
- Statutory Revisions and Legislation (SB3444)

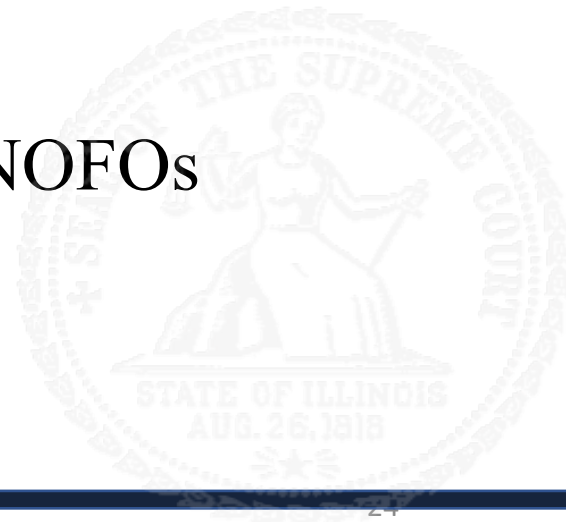


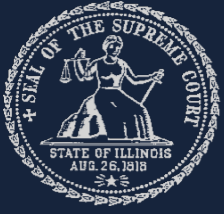


# How Can 708 Boards Help?

Administrative Office  
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Illinois Courts

- Promote and coordinate local Sequential Intercept Mapping Workshops/Bar Symposia
- Facilitate discussions with Courts, Sheriffs, and Mental Health Providers
- Get to know your State's Attorney and Public Defender
- Support Diversion Programs (PSCs and AOT)
- Encourage local response to DHS Outpatient Restoration NOFOs
- Advocate, Educate, and Support Legislation





# Lead, Examine, Educate, Advocate

Administrative Office  
of the  
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[Illinois Courts: Leading Change](#)

