

Ethical Challenges in Judicial Proceedings involving Defendants with Mental Illness

April 8, 2022



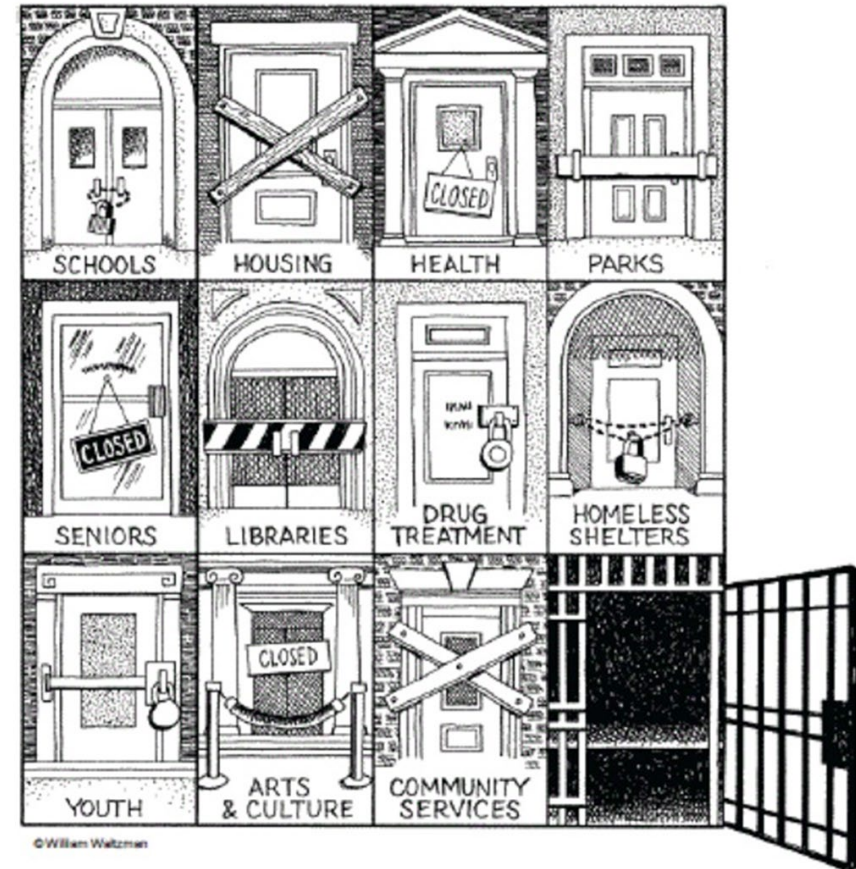
TEXAS TECH UNIVERSITY
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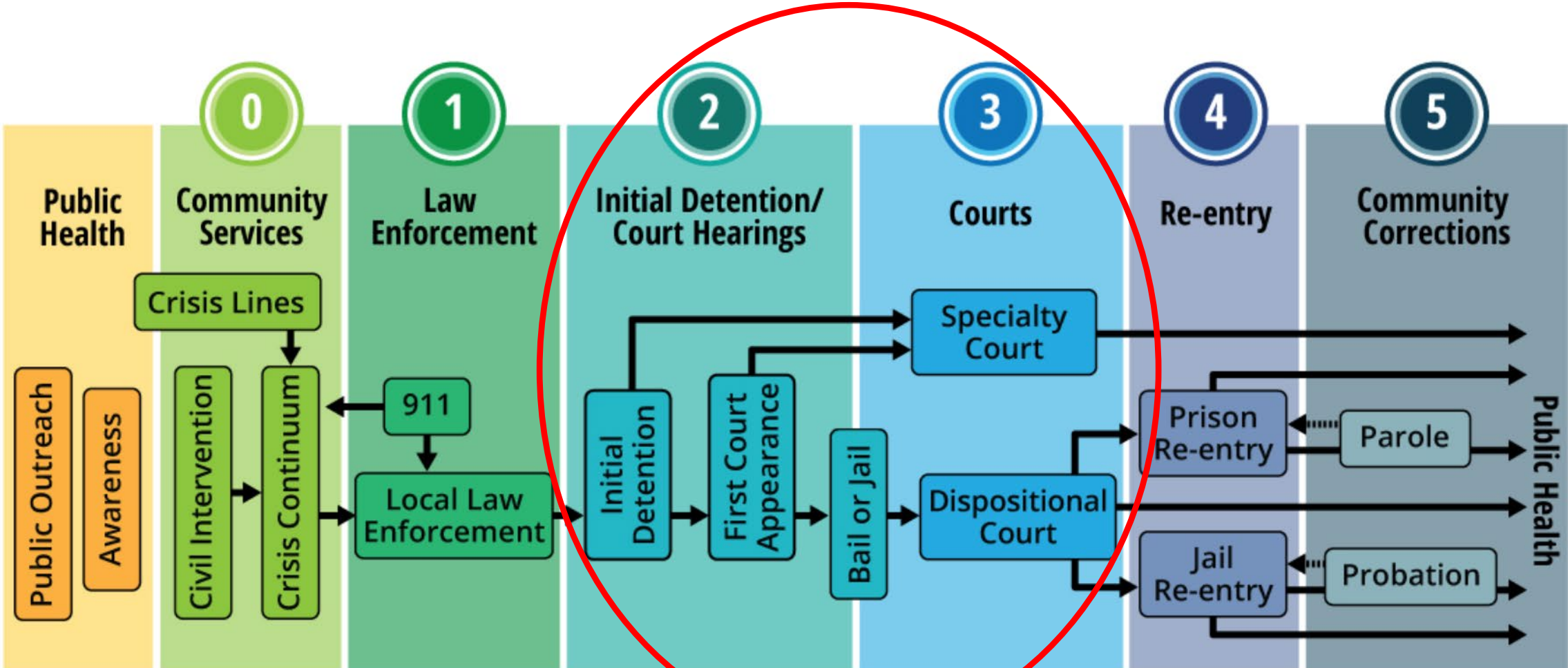
Continuing Challenges

The criminal justice system, in effect, operates as a second public mental health system...

- E.g., what are the largest two public mental health facilities in Texas?



Judiciary Focus



Backlog

State Hospital Forensic Inpatient Waiting Lists (through December 31, 2021)	
Non-Maximum Security People on the Wait List	1278
Average number of days waiting	228
Maximum Security Wait List	
People on the Wait List	745
Average number of days waiting	448

2019 Legislation

- Ethics Point #1
- 16.22 Roadmap



SB 362: Roadmap for Diversion from Criminal Justice to Court-Ordered Outpatient Treatment

- Once an Art. 16.22 report is received, an option is to release the defendant with MI or IDD on bail and transfer the defendant by court order to the appropriate court for court-ordered outpatient mental health services under the Mental Health Code.
- The court may do so “if the offense charged does not involve an act, attempt, or threat of serious bodily injury to another person.”

Competency Restoration: Return to the Court

- Ethics Point #2 - Prompt action is needed
- Avoid decompensation
- Per Article 32A.01, the trial of a criminal action against a defendant who has been determined to be restored to competency **shall be given preference over other matters** before the court, whether civil or criminal (except for criminal cases in which the alleged victim is under the age of 14).

Competency Restoration: Return to the Court

- Prompt action is needed
- Avoid decompensation
- But, what happens if
 - Lack of clarity in 46B.084

Competency Restoration: Subsequent Commitment Proceedings

- Ethics Point #3
- Only 1 criminal competency commitment is permitted (with a possible 60-day extension)

Medication

- Ethics Point #4
- 2021 bill: Psychiatric stabilization at the jail
- Expansion on Sandra Bland Act requirements for 24/7 access
 - Also, note other medication hearing authority



Competency Restoration – only if needed

- Competency restoration process ≠ mental health treatment, per se. Especially for low-level offenses, a court should consider diversion or dismissal instead.

The Court's Role(s) in MH cases:

- Diversion gatekeeper
- Competency proceedings, IF needed
- Know the alternatives
- The court as a convener!
- New Checklists!!!



**MORE THAN 2,100 PEOPLE
ARE CURRENTLY ON TEXAS'
FORENSIC WAITLIST**



**70% STATE HOSPITAL BEDS
IN TEXAS ARE CURRENTLY
UTILIZED BY THE FORENSIC
POPULATION**

**OVER THE PAST 20 YEARS,
TEXAS HAS SEEN A 38% INCREASE
IN RATES OF PEOPLE FOUND
INCOMPETENT TO STAND TRIAL**



Diversion Opportunities

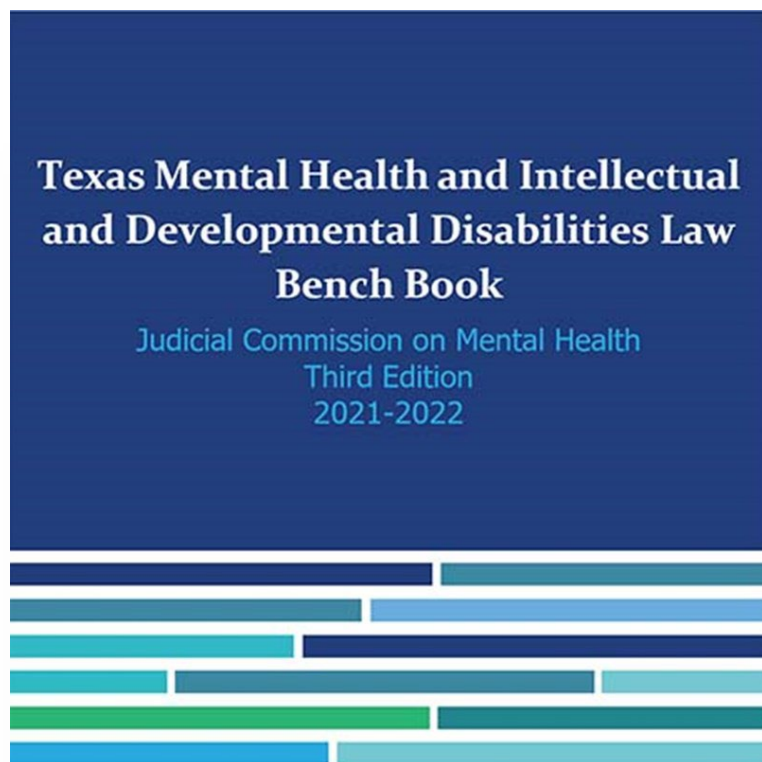
- **16.22(c)(5) – Diversion Roadmap for Transfer**
 - Does the offense “involve an act, attempt, or threat of serious bodily injury to another person”?
- “Non-statutory” diversion
- Toolkit:
<http://texasjcmh.gov/media/erwfg1mp/eliminate-the-wait-toolkit-1-19-22-final.pdf>

ELIMINATE the WAIT

The Texas Toolkit
for Rightsizing
Competency Restoration Services

October 2021



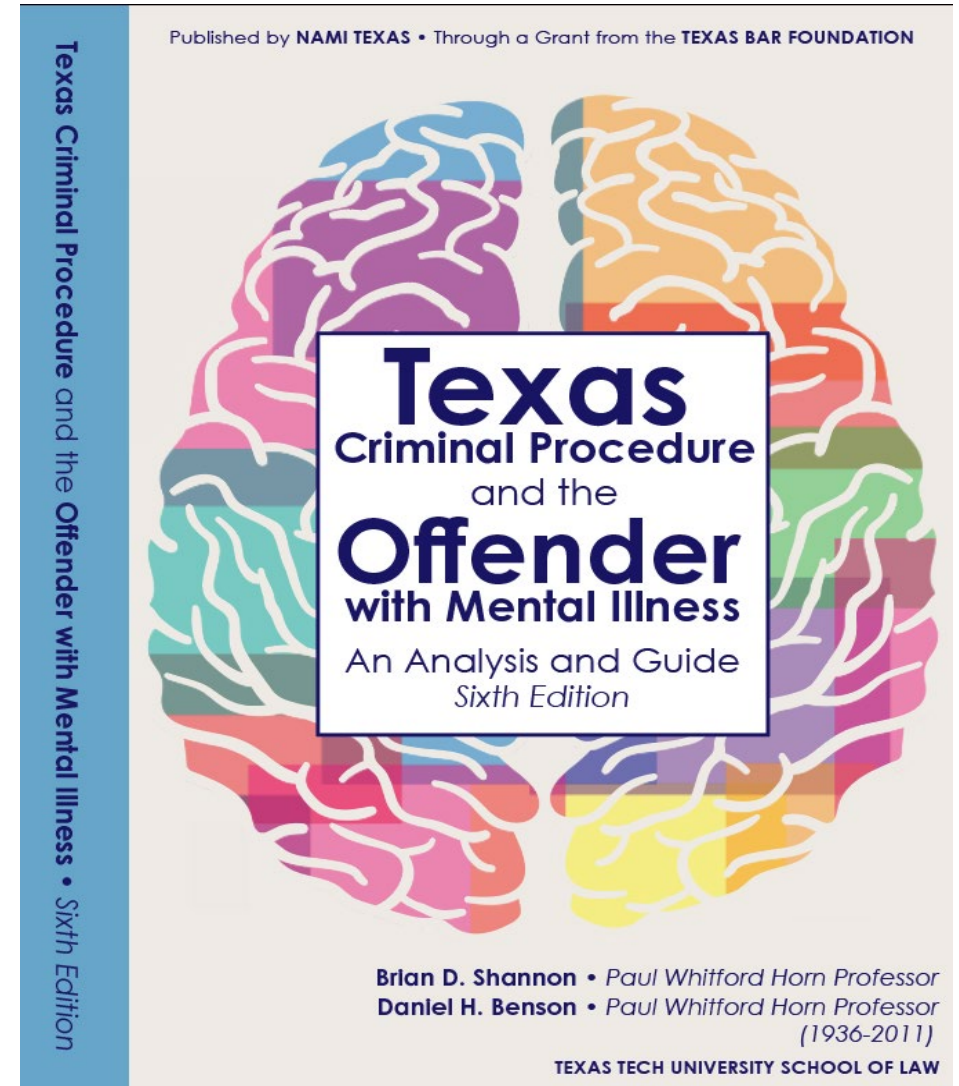
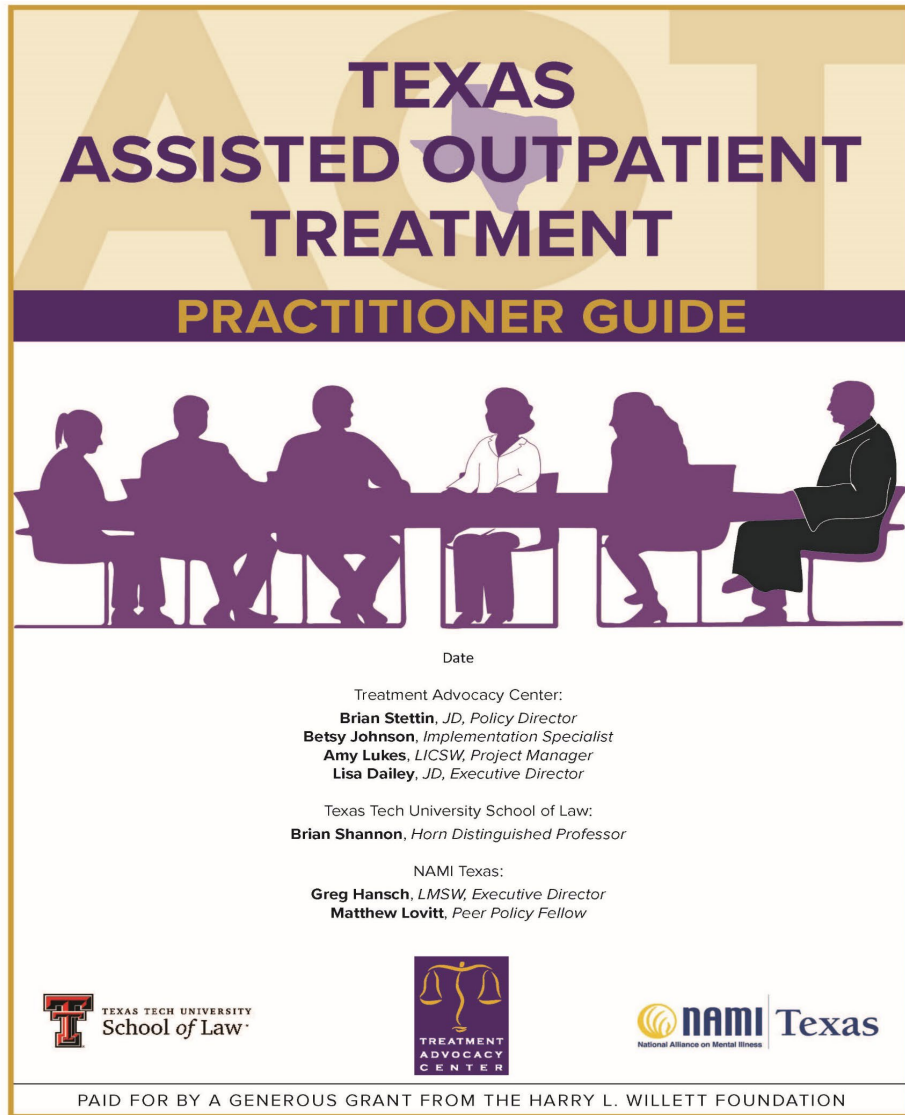


Free Resource:

<http://texasjcmh.gov/publications/bench-books/>

Additional Free Resources:

<https://namitexas.org/texas-criminal-justice-guide/>



<https://aotconference.mightycrow.com/wp-content/uploads/2022/04/Texas-AOT-Practitioner-Guide-Appendix-Pending.pdf>