Competency Restoration in Vermont: Policy Landscape and Pathways

Celine Choi, Emily Leung, and JJ Dega
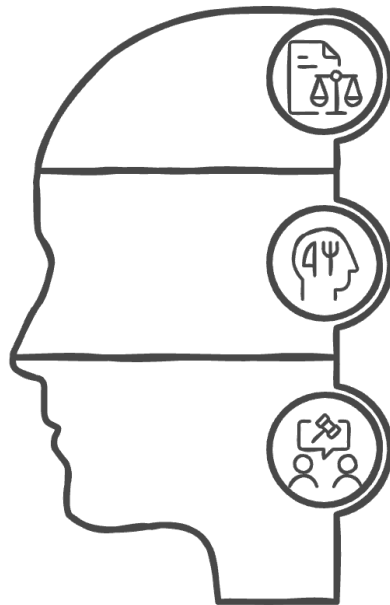
Agenda

- Vermont's Current Process and Legislative Context
- Research Methodology and Analysis
- Potential policy pathways for Vermont

Definition of Competency Restoration

Understand Charges

Understand legal process

Fair opportunity to participate in their defense

Goals of Competency Restoration

1	Enable legal proceedings to continue
2	Address underlying health issues
3	Balance public safety concerns
4	Reduce recidivism

Research Question

What policy and program options are available to Vermont to **address** competency-related issues in the criminal justice system?

Which options would effectively **balance** legal due process requirements, clinical treatment needs, stakeholder interests, and broader public health and safety concerns?

Legislative Context

80% court cases involving mental health or substance use disorders

2022: VT established Judiciary Commission on Mental Health and the Courts

Legislative Context: S.91

S.91 (Act 28)

An act relating to competency to stand trial and insanity as a defense

Sponsor(s)   Sen. Virginia Lyons

               Sen. Richard Sears Jr.

Last Recorded Action   House 5/12/2023 - Senate Message: Signed by Governor **May 30, 2023**

Legislative Context: H.251

H.251

An act relating to establishing a competency restoration process

Sponsor(s)	Rep. Martin LaLonde
Location	House Committee on Judiciary
Last Recorded Action	House 2/18/2025 - Read first time and referred to the Committee on **Judiciary**

1   H.251

2   SHORT FORM

3   Introduced by Representative LaLonde of South Burlington

4   Referred to Committee on

5   Date:

6   Subject: Judiciary; health; mental health; competency restoration; incompetent

7   to stand trial

8   Statement of purpose of bill as introduced: This bill proposes to establish a

9   competency restoration legal process for criminal defendants found

10   incompetent to stand trial that provides mental health treatment and protects

11   the community.

12   An act relating to establishing a competency restoration process

13   It is hereby enacted by the General Assembly of the State of Vermont:

14   (TEXT OMITTED IN SHORT-FORM BILLS)

Legislative Context: H.405

H.405

An act relating to competency to stand trial

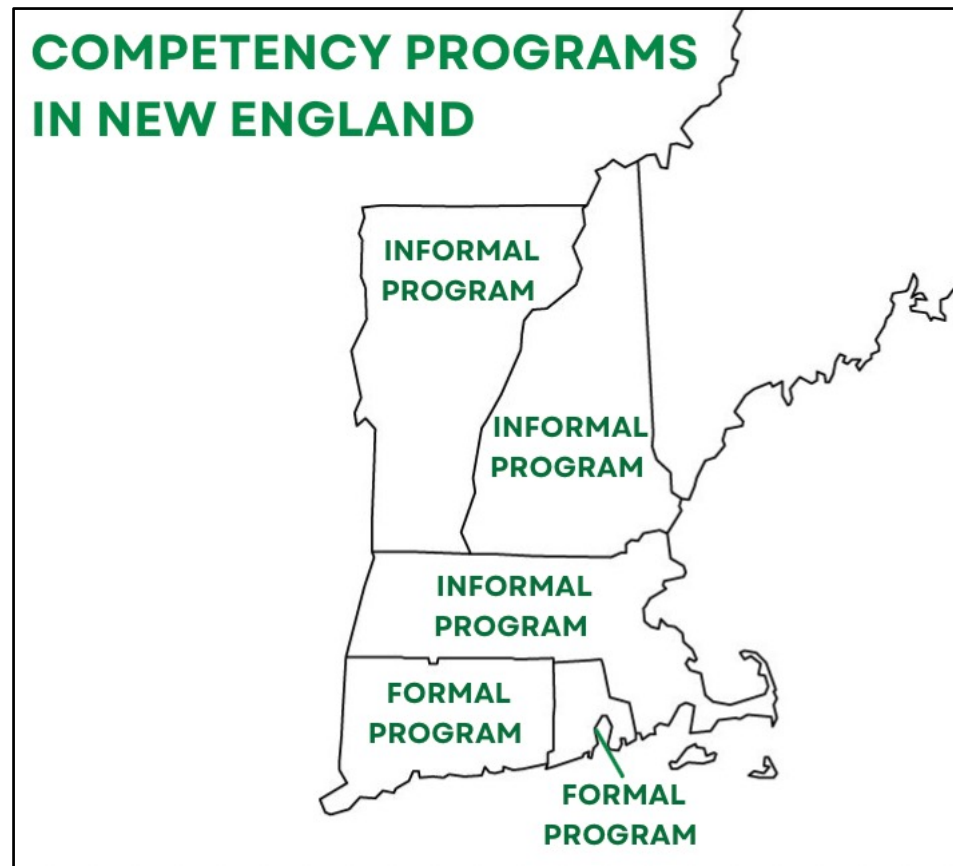|	
Sponsor(s)	Rep. Martin LaLonde
Location	House Committee on Judiciary
Last Recorded Action	House 2/27/2025 - Read first time and referred to the Committee on **Judiciary**

1   H.405

2   Introduced by Representative LaLonde of South Burlington

3   Referred to Committee on

4   Date:

5   Subject: Criminal procedure; competency to stand trial

6   Statement of purpose of bill as introduced: This bill proposes to provide that

7   when a person has been found incompetent to stand trial for a criminal offense,

8   the charges against the person shall be dismissed if the person has not regained

9   competency prior to the expiration of the statute of limitations for the offense.

10   An act relating to competency to stand trial

11   It is hereby enacted by the General Assembly of the State of Vermont:

12   Sec. 1. 13 V.S.A. § 4817 is amended to read:

13   § 4817. COMPETENCY TO STAND TRIAL; DETERMINATION;

14   DISMISSAL

15   * * *

16   (b) A person shall not be tried for a criminal offense if the person is found

17   incompetent to stand trial by a preponderance of the evidence.

18   * * *

19   (d) A person who has been found incompetent to stand trial for an alleged

20   offense may be tried for that offense if, upon subsequent hearing, such person

1. Research Background
2. **Research Methods**
3. Policy Landscape: Vermont
4. Policy Landscape: Case Studies
5. Policy Pathways

Case Studies and Selection

COMPETENCY PROGRAMS IN NEW ENGLAND

INFORMAL PROGRAM

INFORMAL PROGRAM

INFORMAL PROGRAM

FORMAL PROGRAM

FORMAL PROGRAM

Stakeholder Interviews

Conducted 13 Interviews conducted with individual and groups of stakeholders discussing:

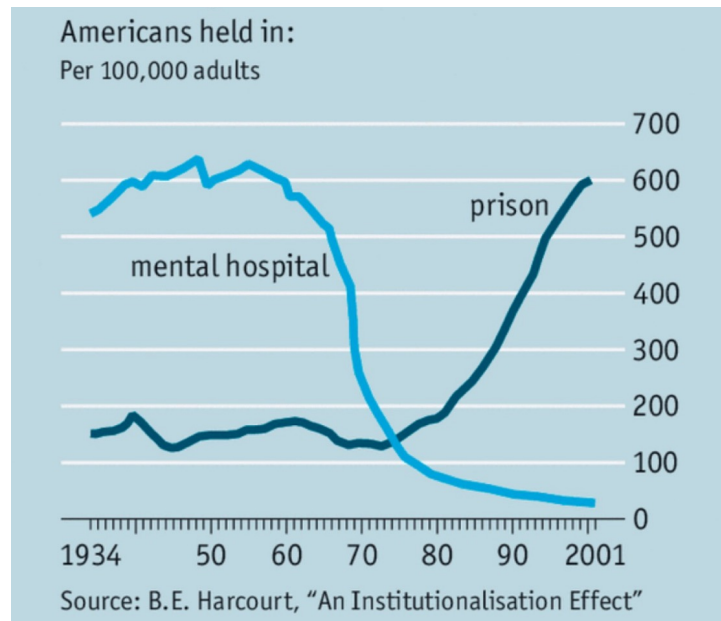|		
Program Structure and Effectiveness	Areas for Improvement	Alternative Approaches
Data Collection and Sharing	Responsibilities of Stakeholders	Key Considerations for Implementation

Results

1. Historical Landscape of Health and Justice in the United States & Goals of Competency Restoration Programming
2. Five State Profiles
3. Policy Pathways for Competency Restoration in Vermont

1. Research Background
2. Research Methods
3. **Policy Landscape: Vermont**
4. Policy Landscape: Case Studies
5. Policy Pathways

Historical Trans-institutionalization

Trans-institutionalization:

Americans held in:
Per 100,000 adults

prison

mental hospital

700
600
500
400
300
200
100
0

1934   50   60   70   80   90   2001

Source: B.E. Harcourt, "An Institutionalisation Effect"

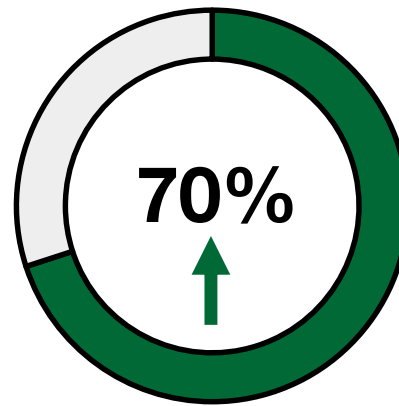Mental health and substance use disorders treated in:

State institutions → Prisons/ Correctional Facilities

Trans-Institutionalization in Vermont Prisons

Prevalence of Mental Health/Substance Use Disorders (Individuals in Prison on Psychotropic Medication)

70%

■ Incarcerated Population Taking a Psychotropic Medication
□ Incarcerated Population NOT Taking a Psychotropic Medication

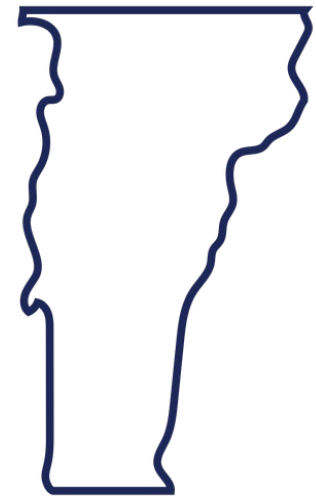**Source:** Interviews with Vermont State Officials

Vermont's Current Competency System
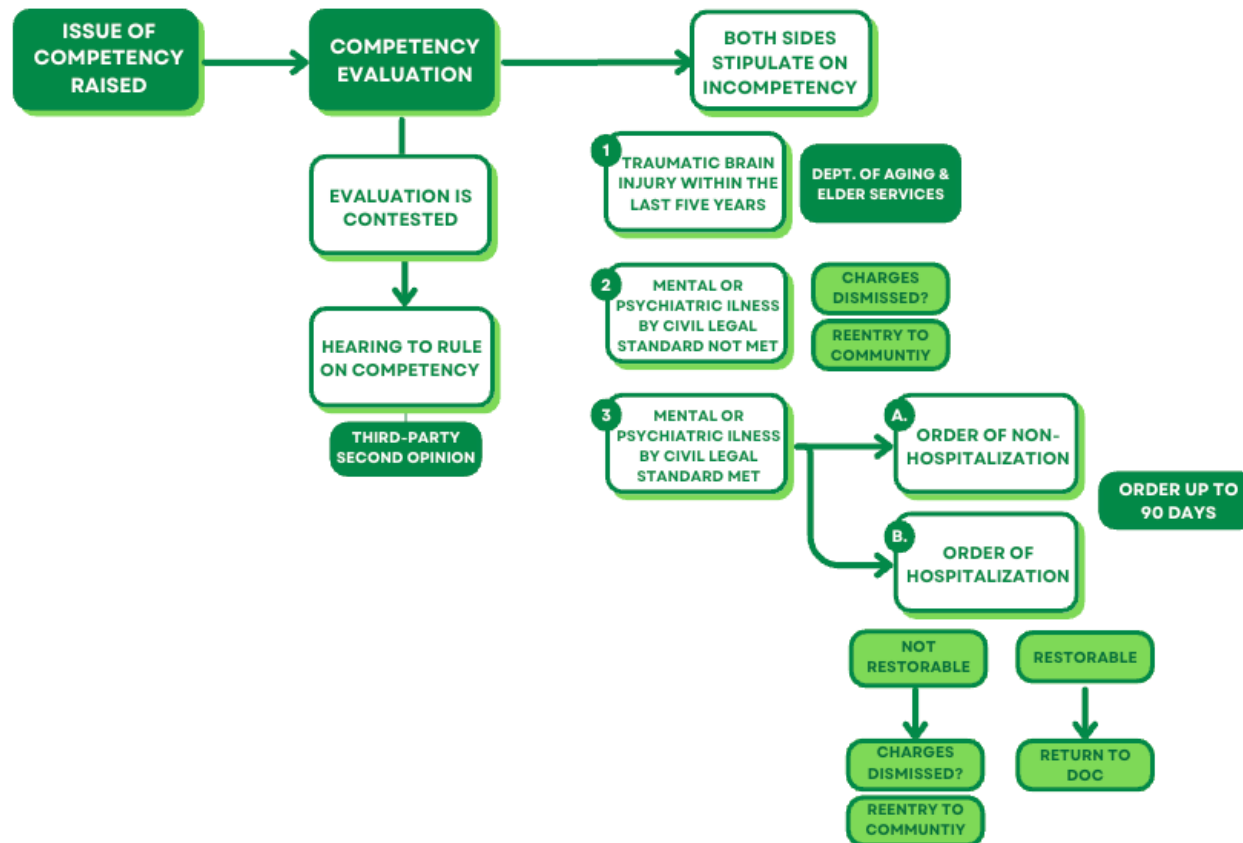
Vermont Policy Landscape

Lacks formal competency restoration program

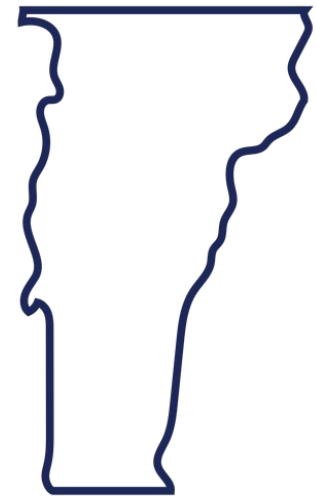Goal: ensure individual does not pose a danger

Vermont Policy Landscape: Key Considerations

Operates through Vermont Department of Mental Health

Medicaid Funding: Individuals need to meet Vermont and national criteria
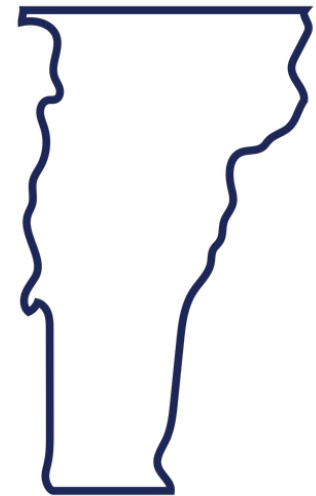
Decentralized system: treat close to home

Vermont Policy Landscape: Current System Challenges

Costs

Staff shortages: (Current need to outsource out-of-state psychologists and psychiatrists)

Lack of communication between treatment providers and legal teams

1. Research Background
2. Research Methods
3. Policy Landscape: Vermont
4. **Policy Landscape: Case Studies**
5. Policy Pathways

Case Study: **New Hampshire**

STRUCTURE: No Formal Competency Restoration Program

- Utilizes the **Competency Assessment Instrument** (CAI) tool for evaluation

- **Ohio Risk Assessment System** (ORAS) used to inform evaluation and treatment options

- NH State Hospital: 24 forensic beds

- Statue outlines a **12-month time frame** for restoration, charges are dismissed if unrestorable

- Emphasize pre-trial diversion options to mental health court

  - Mental Health Court challenges: varied system by county, no standard funding

Case Study: **Massachusetts**

STRUCTURE: No Formal Competency Restoration Program

- **Court clinicians** perform evaluations and recommendations to the judge and lawyers

- Inpatient treatment commitment orders are valid for **six months**

- Several DMH facilities for competency restoration; Bridgewater State Hospital inpatient care

- Individuals with cognitive disabilities can be recommended to outpatient neuropsychological testing

- For those who do not meet the criterial for inpatient treatment, it is ultimately the **burden of the defense** attorney

Case Study: **Connecticut**

STRUCTURE: Formal Competency Restoration Program

- Strict focus on **legal status** of competency

- Competency orders for **all level of offenses**

- **Team oriented** restoration programming

- **Two inpatient psychiatric hospitals**: Connecticut Valley Hospital, Whiting Forensic Hospital

- **18-month maximum** for restoration, but usually completed around 6-9 months

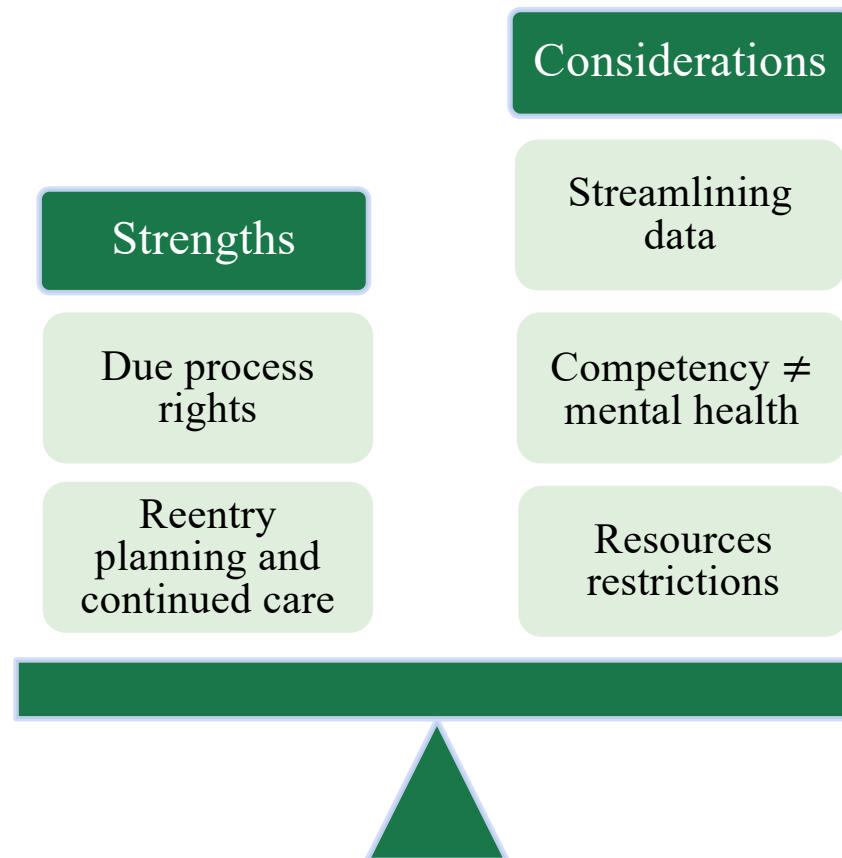- Enhanced Forensic Respite Bed (EFRB) model

Case Study: **Rhode Island**

STRUCTURE: Formal Competency Restoration Program

- Centralized operations

- **Three-part evaluation**: 1. Clinical evaluation, 2. Competency Evaluation, 3. Psychiatric risk assessment

  - Must be not competent and violent/high-risk for restoration programming

- **Two inpatient psychiatric hospitals**: Eleanor Slater Hospital, Rhode Island Psychiatric Hospital

- **Six-month time frame** for restoration and reevaluation

- Goal is to move towards decriminalization and treatment

Strengths and Considerations

Considerations

Streamlining data

Strengths

Due process rights

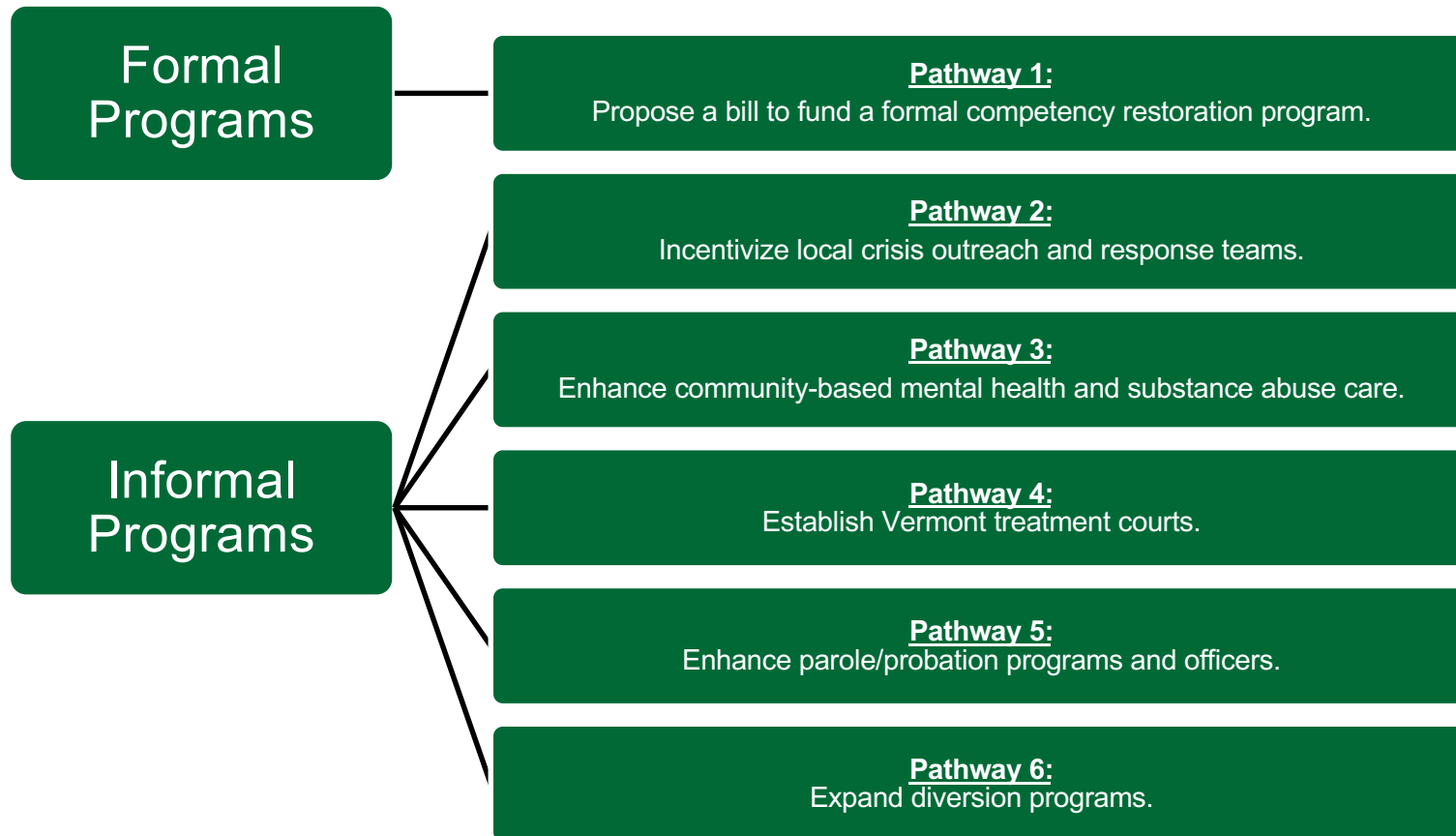Competency ≠ mental health

Reentry planning and continued care
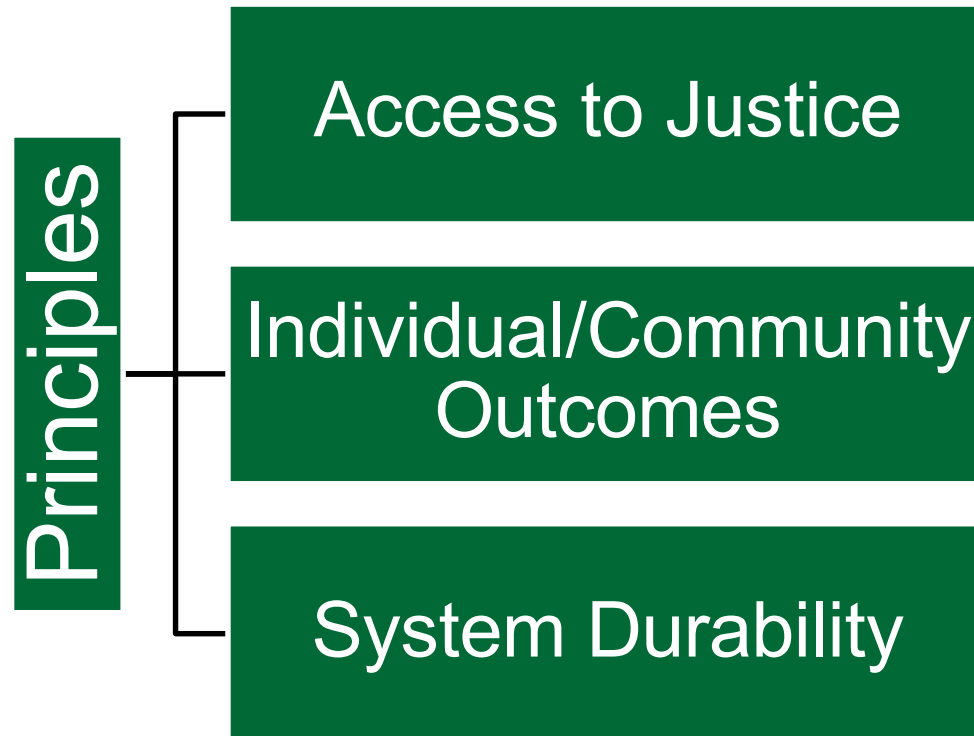
Resources restrictions

1. Research Background
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3. Policy Landscape: Vermont
4. Policy Landscape: Case Studies
5. **Policy Pathways**

Policy Pathways Overview

Formal Programs

Pathway 1:
Propose a bill to fund a formal competency restoration program.

Informal Programs

Pathway 2:
Incentivize local crisis outreach and response teams.

Pathway 3:
Enhance community-based mental health and substance abuse care.

Pathway 4:
Establish Vermont treatment courts.

Pathway 5:
Enhance parole/probation programs and officers.

Pathway 6:
Expand diversion programs.

Principles for Analysis

Principles
- Access to Justice
- Individual/Community Outcomes
- System Durability

Principles for Evaluation: **Access to Justice**

Definition: Individuals have their cases assessed fairly on their merits, without procedural or practical barriers preventing meaningful participation in the legal process

| Upholding Individual Accountability | Incorporating Perspectives of Criminal Victims | Ensuring Ethical Treatment Selection | Preventing treatment from extending time held |

Principles for Evaluation: **Individual/Community Outcomes**

Definition: Measurable results for both individual defendants and the broader community

- Improving Public Health
- Enhancing Public Safety
- Using Evidence-Based Approaches
- Boosting Restoration Success Rates
- Reducing Criminal Justice System Interactions

Principles for Evaluation: **System Durability**

Definition: Short-term operational efficiency and long-term sustainability, recognizing that even the most well-designed program will fail if it cannot function effectively within Vermont's resource constraints and institutional landscape.
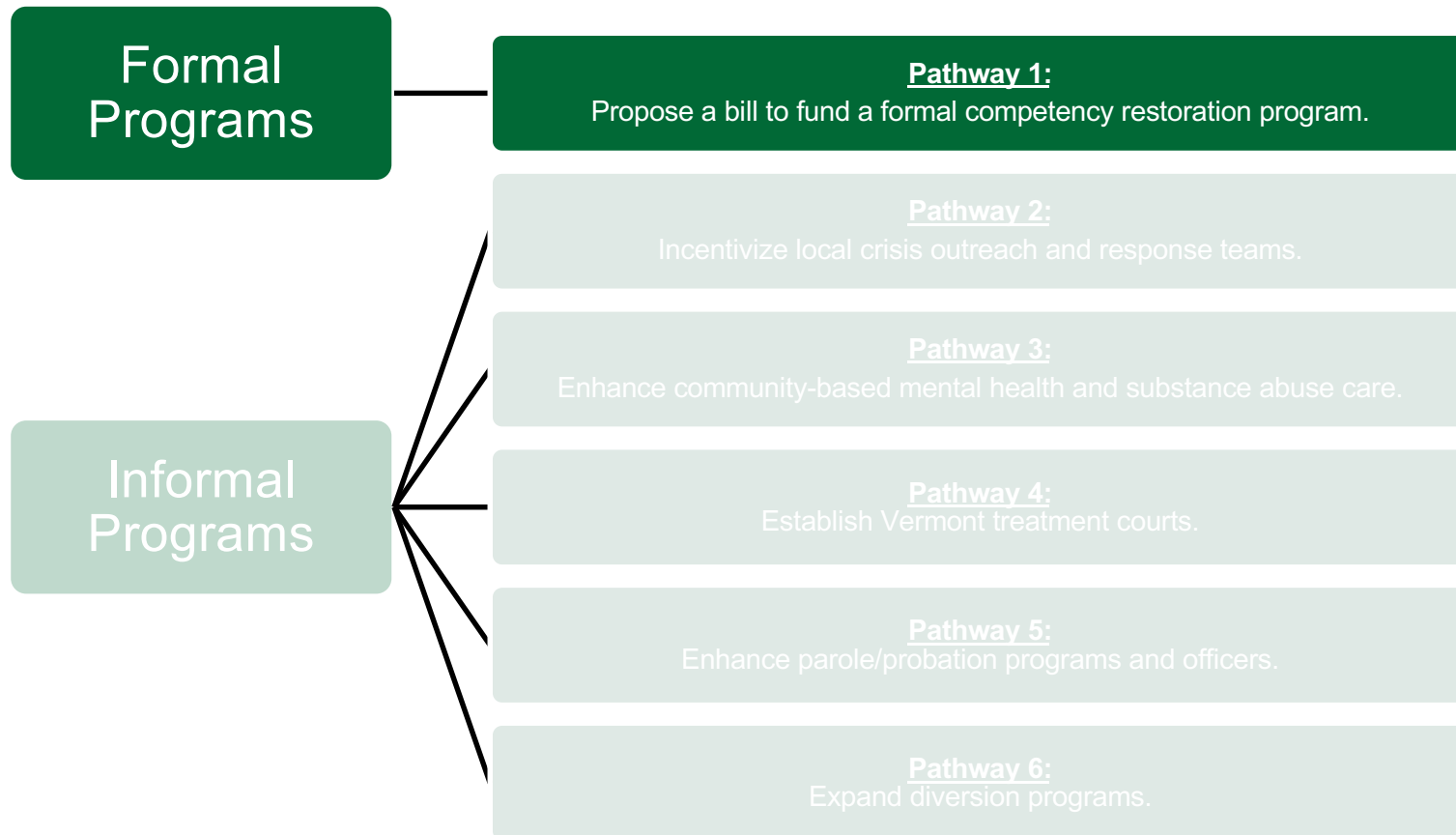
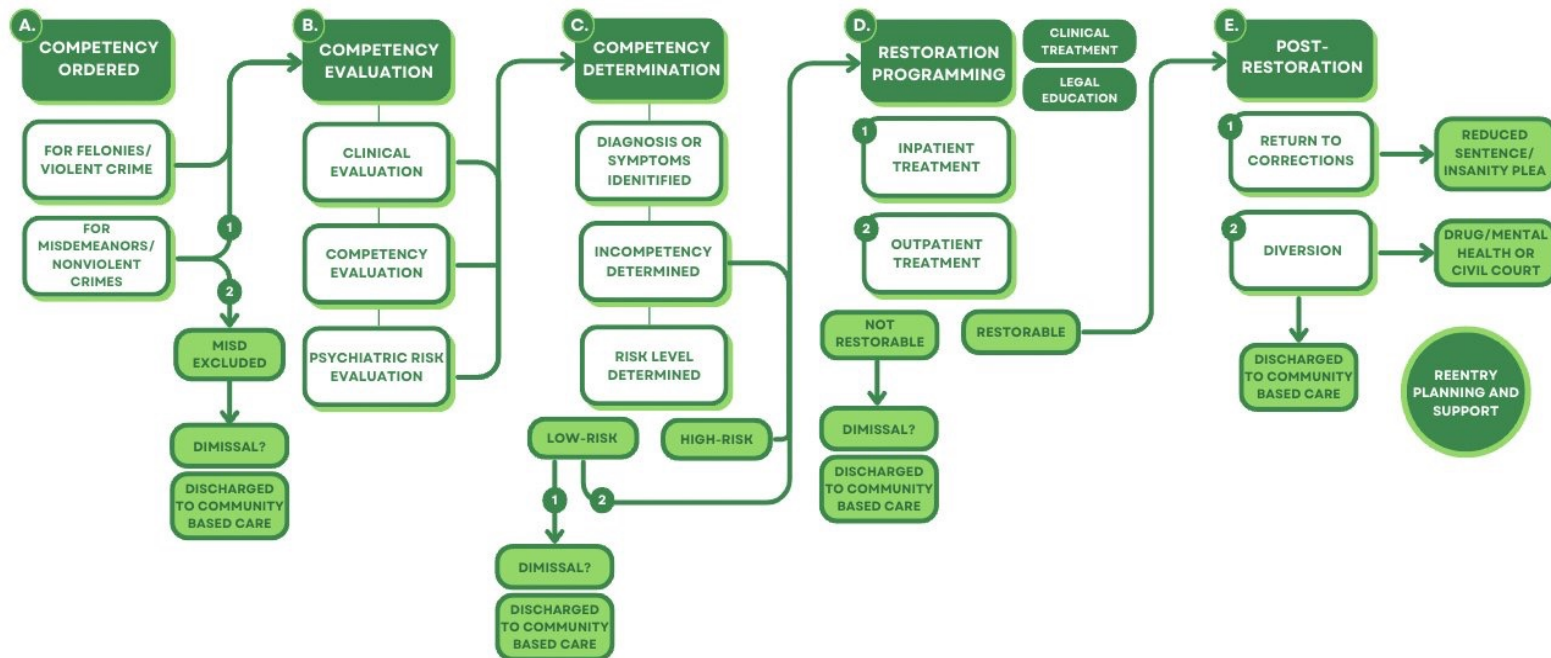| Enhancing Procedural Efficiency | Ensuring Fiscal Sustainability | Supporting Workforce Capacity | Creating Scalable Programs | Fostering Stakeholder Collaboration |

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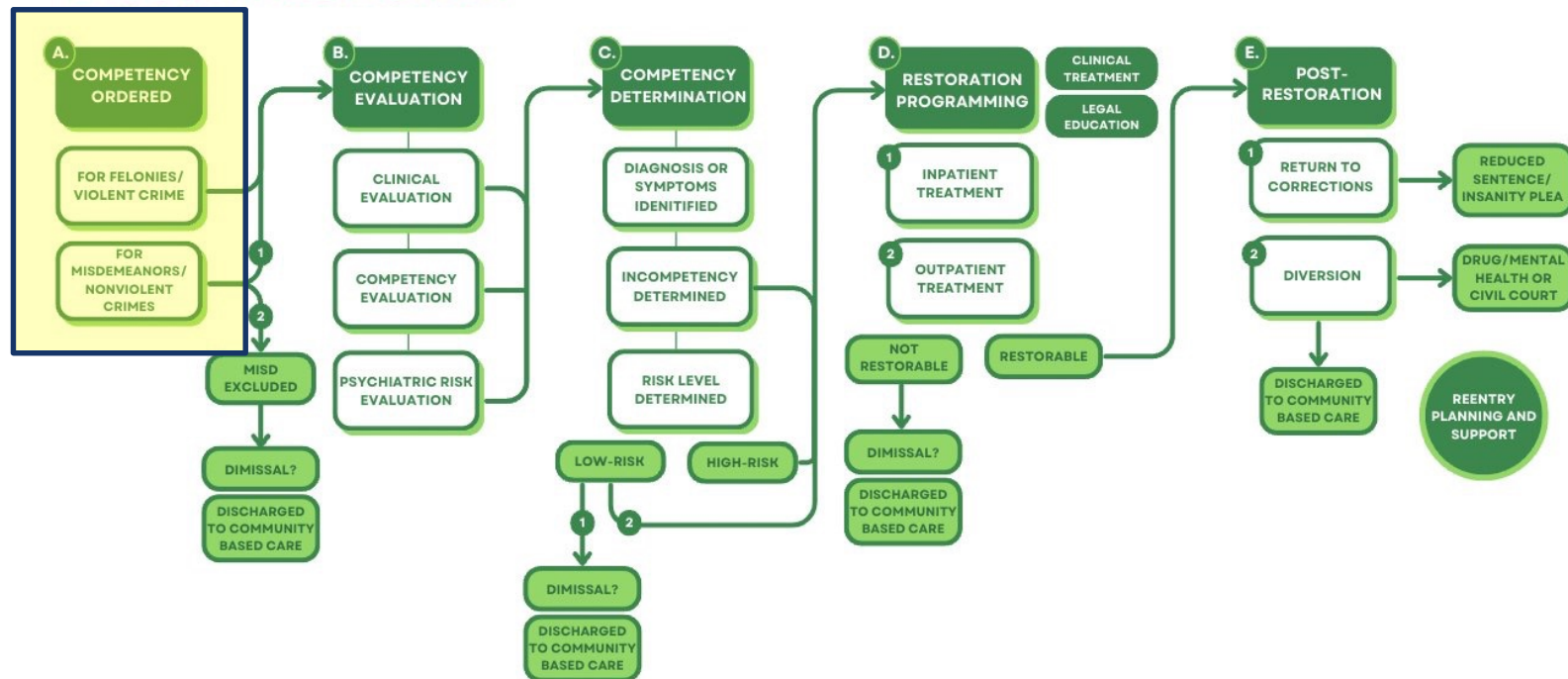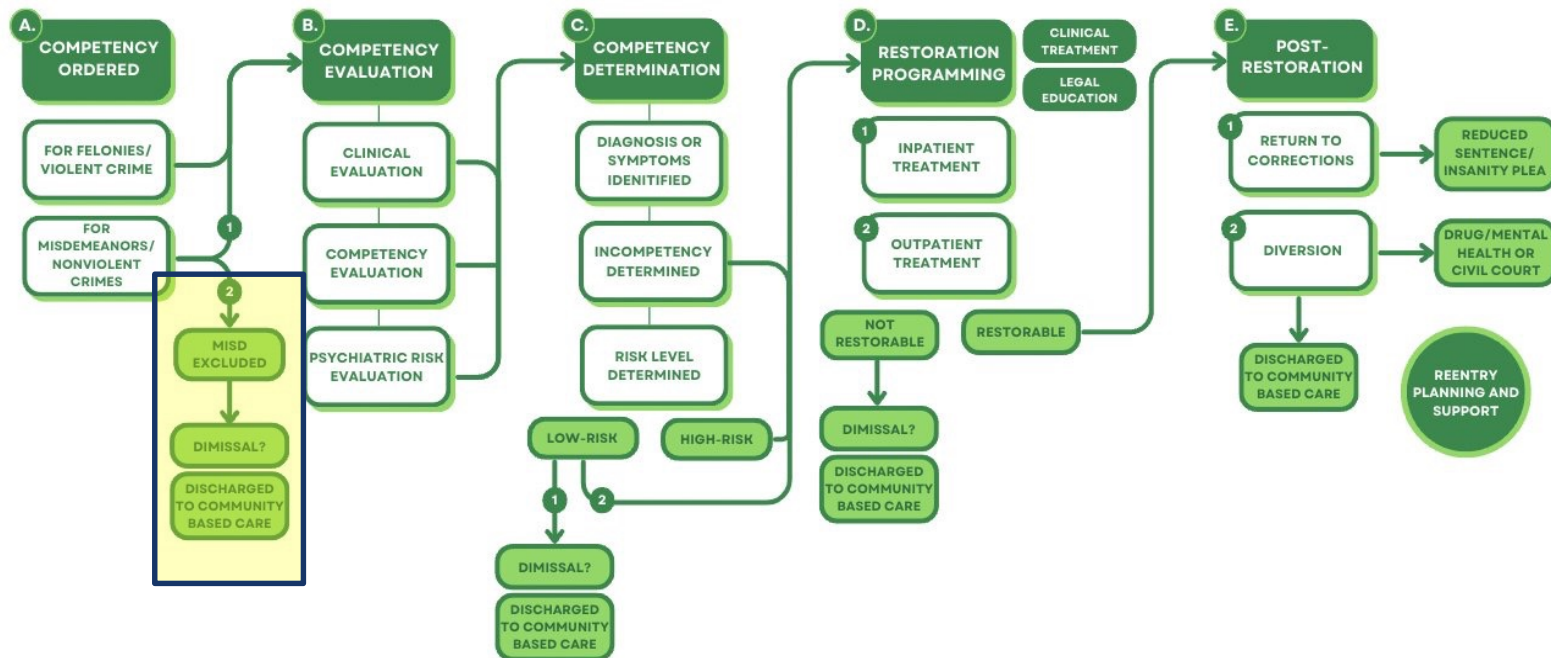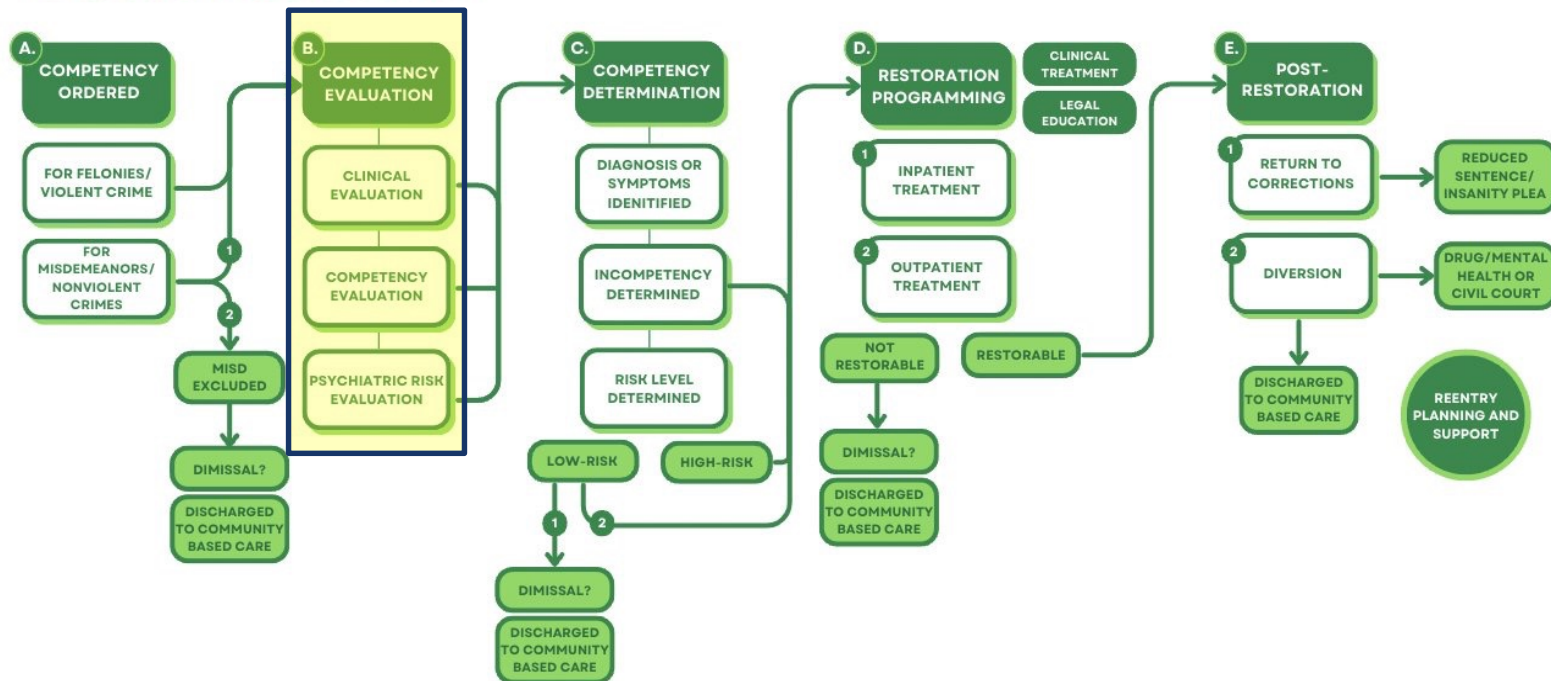
Pathway 6:
Expand diversion programs.

Pathway 1: Fund a formal competency restoration program

FORMAL COMPETENCY RESTORATION PROGRAM FLOWCHART

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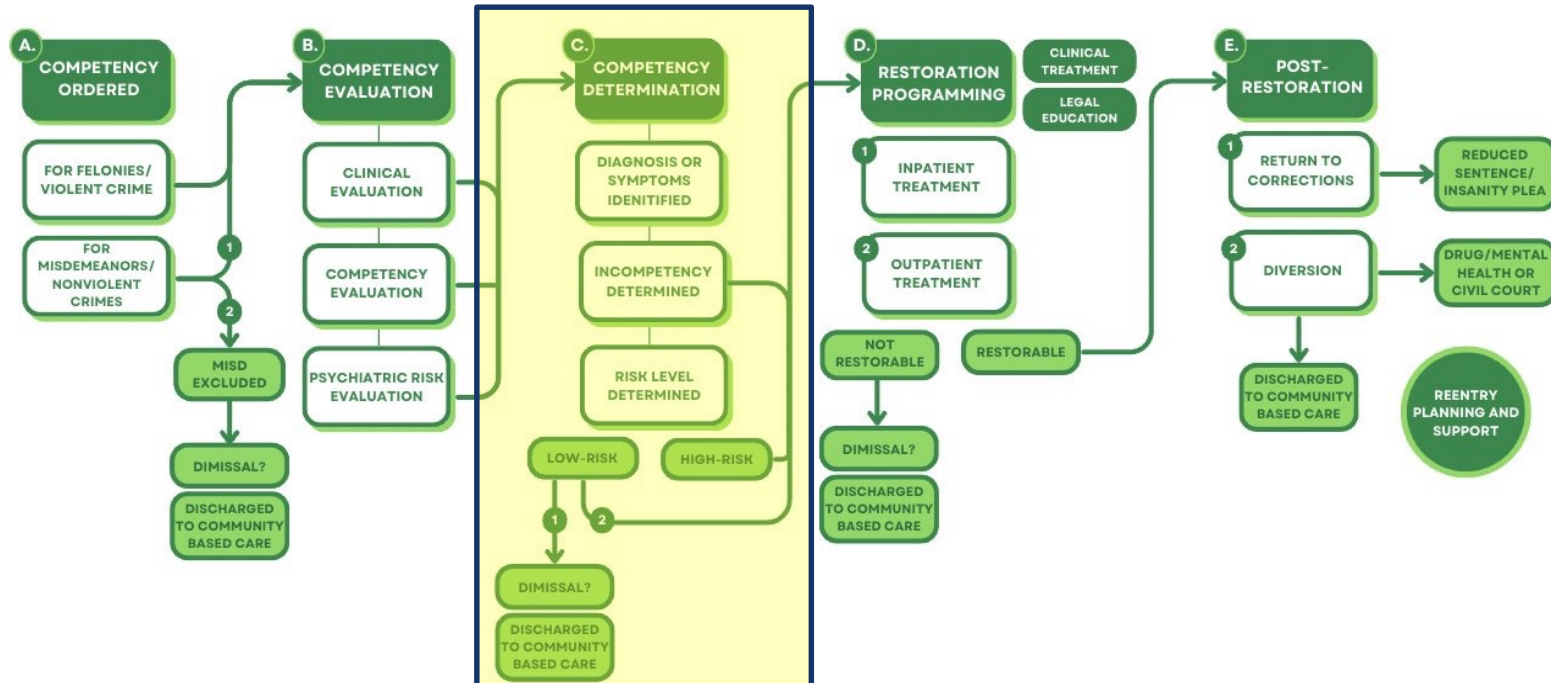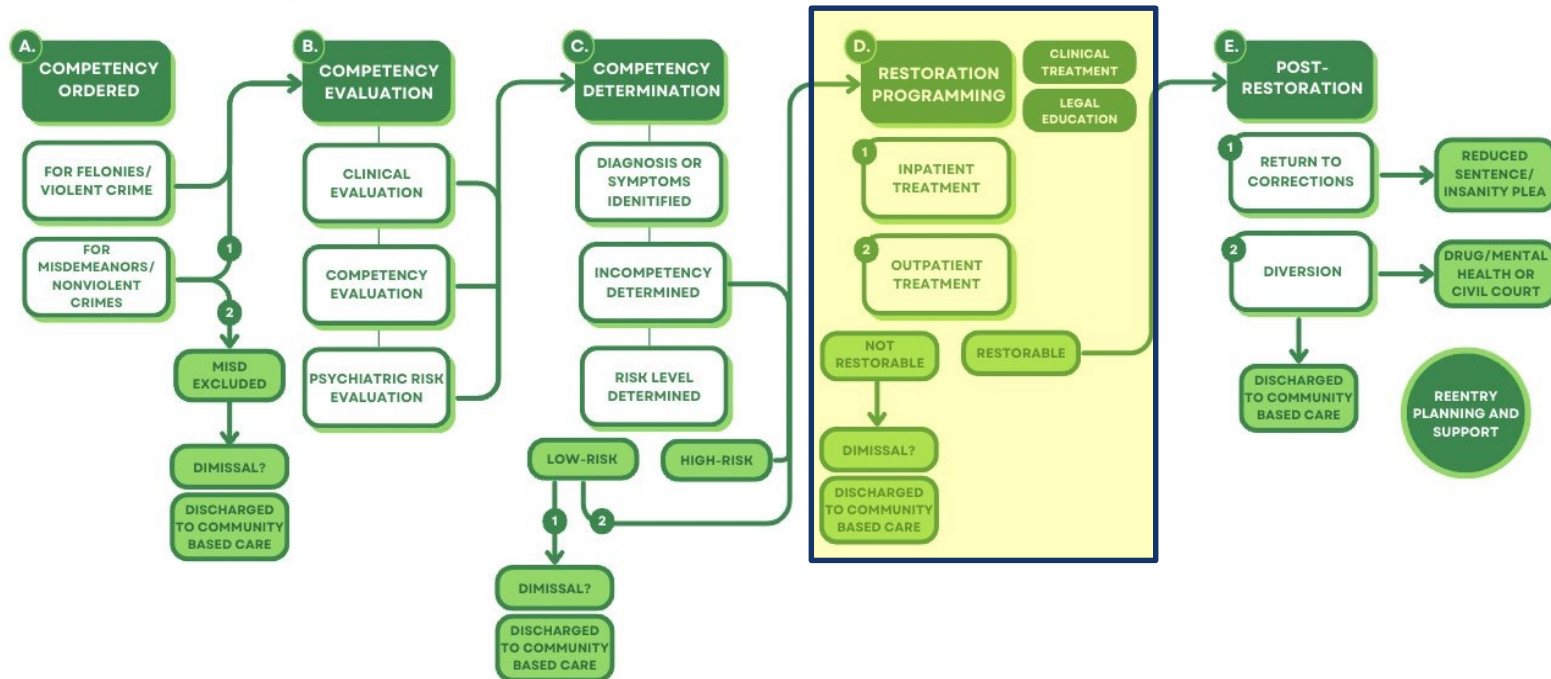

FORMAL COMPETENCY RESTORATION PROGRAM FLOWCHART

Pathway 1: Fund a formal competency restoration program

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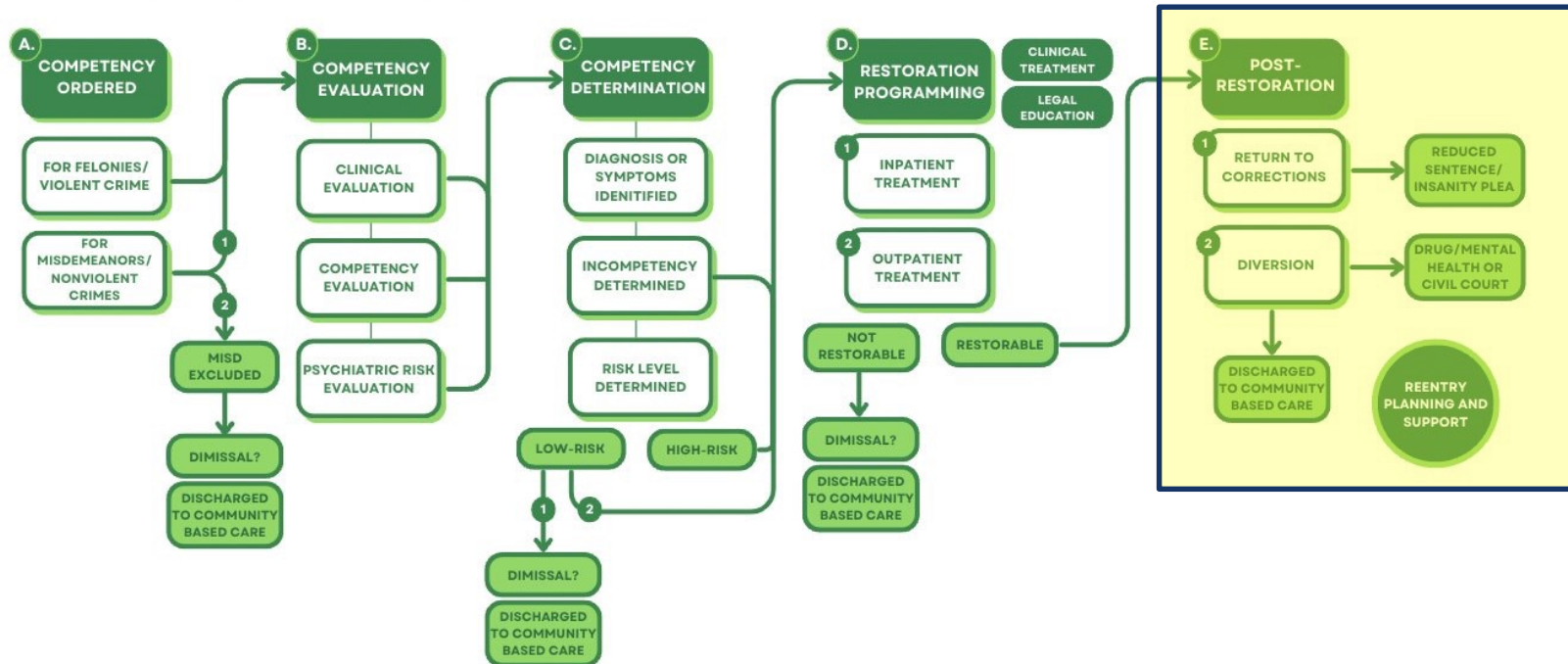

FORMAL COMPETENCY RESTORATION PROGRAM FLOWCHART
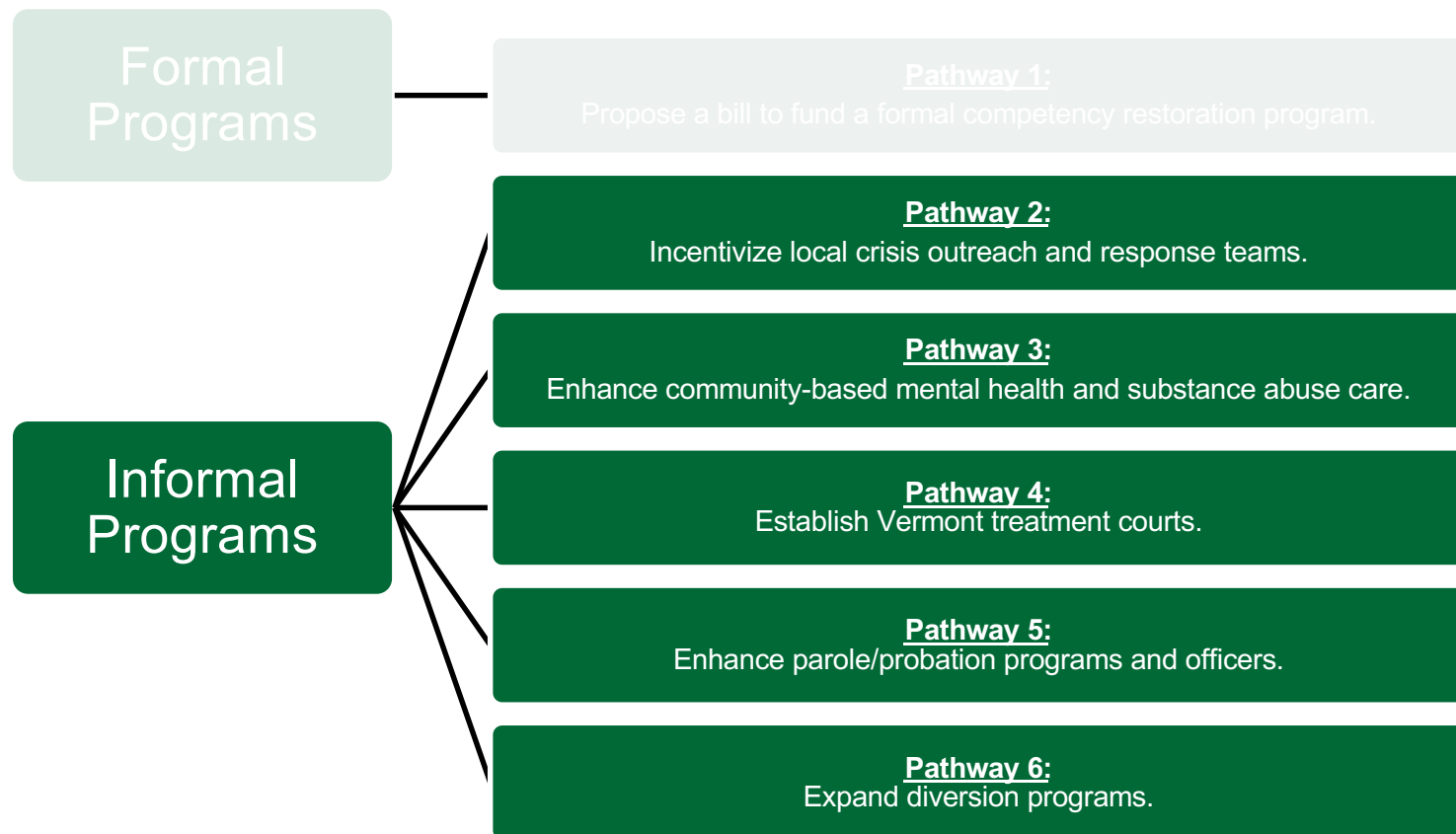
Challenges to a Formal Program

Accountability

Communication and Data

Staffing and Infrastructure

Cost & Funding

Policy Pathways Overview

Formal Programs

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Pathway 4:
Establish Vermont treatment courts.

Pathway 5:
Enhance parole/probation programs and officers.

Pathway 6:
Expand diversion programs.

Community Partners

**Vermont Community
Justice Centers**

**Turning Point
Vermont**

**Pathways
Vermont**

**Vermont Care
Partners**

Pathway 2: Incentivize local crisis outreach and response teams

Benefits

- Already implemented in Vermont (Montpelier)

- Can prevent individuals from entering the legal system

- Policy occurs at the community (not statewide) level

Considerations

Could be best for: A local solution for diverting cases out of the criminal justice system

Pathway 3: Enhance community-based abuse care

Benefits ↑

Considerations ↓

- Community-based care is "optimal"
- Could help with competency issues and re-entry from incarceration

- Requires financial investment from the legislature

Could be best for: Long-term public health improvement

Pathway 4: Establish Vermont treatment courts

Benefits

- Already partially established in Vermont

- Judicial branch resources

Considerations

Could be best for: Reducing recidivism, establishing clear processes for competency-related cases

Pathway 5: Enhance parole/probation programs and officers

Benefits

- Strengthens care without sacrificing accountability
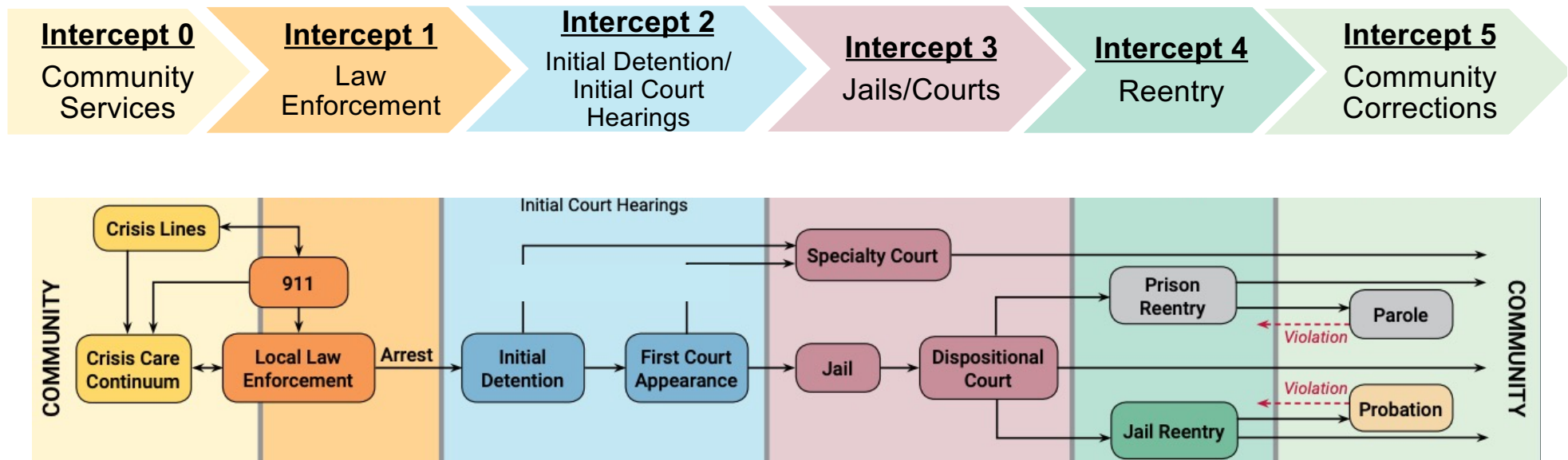- Could decrease the number of incarcerated individuals

- Mainly a Department of Corrections-led policy

Considerations

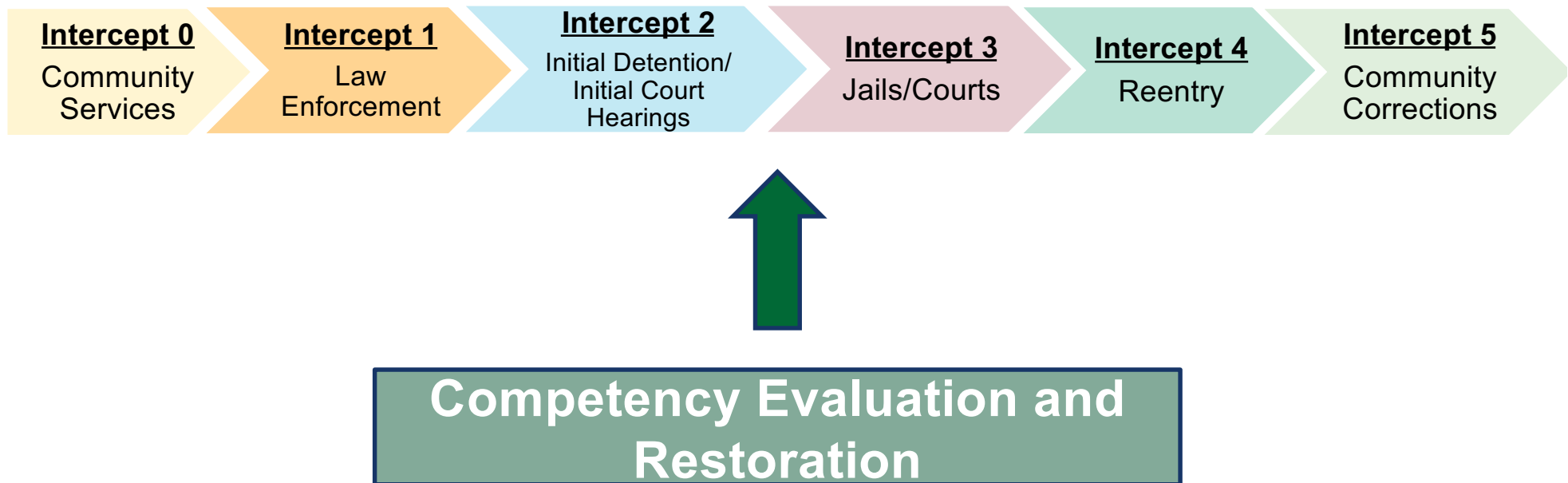**Could be best for:** Ensuring accountability with concurrent treatment

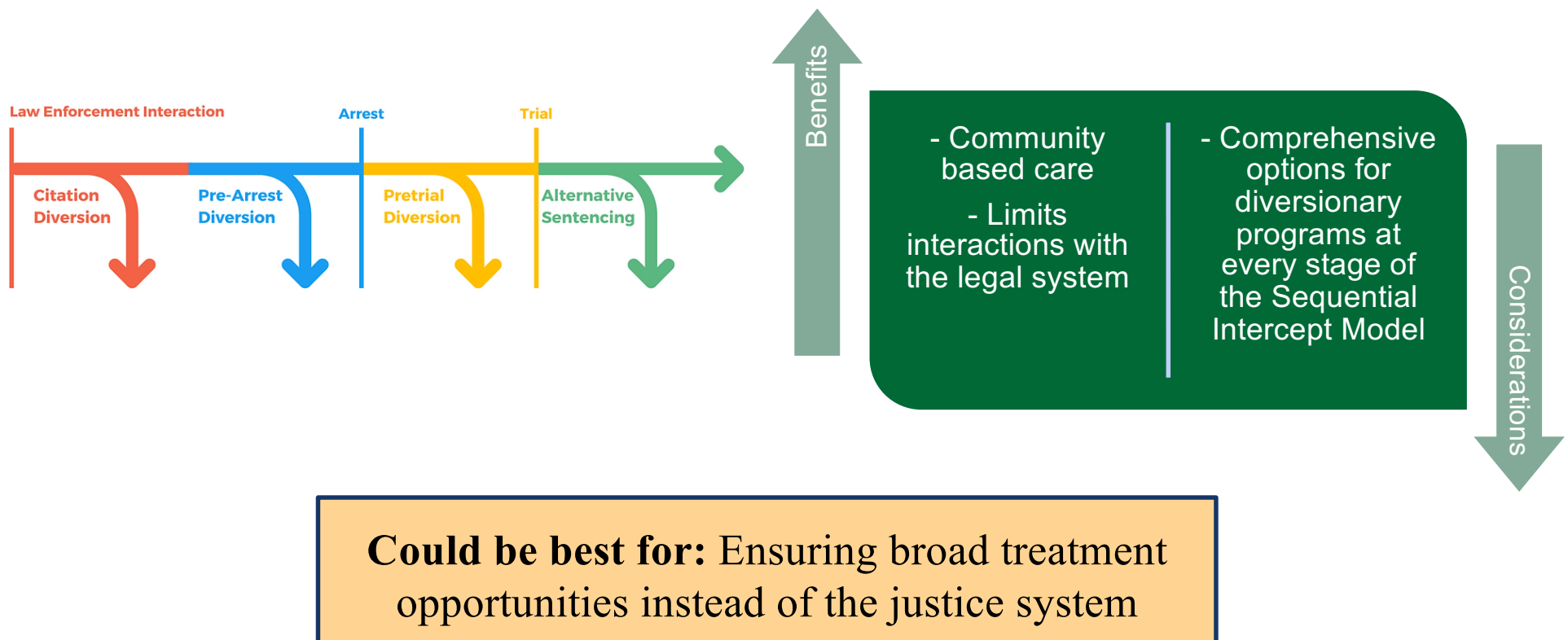# Pathway 6: Expand diversion programs

Sequential Intercept Model

Pathway 6: Expand diversion programs

Sequential Intercept Model

| **Intercept 0** Community Services | **Intercept 1** Law Enforcement | **Intercept 2** Initial Detention/ Initial Court Hearings | **Intercept 3** Jails/Courts | **Intercept 4** Reentry | **Intercept 5** Community Corrections |

Competency Evaluation and Restoration

Pathway 6: Expand diversion programs

Law Enforcement Interaction

Arrest

Trial

Citation Diversion

Pre-Arrest Diversion

Pretrial Diversion

Alternative Sentencing

Benefits

Considerations

- Community based care

- Limits interactions with the legal system

- Comprehensive options for diversionary programs at every stage of the Sequential Intercept Model

Could be best for: Ensuring broad treatment opportunities instead of the justice system

Conclusion

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