



Mental Health Medication in the Criminal Justice System

By Aaron Carpenter

According to the Colorado Department of Corrections (DOC), between 2012 to 2017, the number of inmates who had moderate to severe mental health needs increased by 7 percent. Additionally, a steep increase in court-ordered competency evaluations and restorative treatments has caused a shortage of psychiatric hospital beds in the state, resulting in many offenders with mental health disorders remaining in jail while waiting for an evaluation or treatment. The increase in mental health needs in the criminal justice system means prisons and jails must provide necessary treatment, such as medication, to those in their care. This issue brief provides an overview of how mental health medication is administered in the criminal justice system and information on recent legislation focused on reducing the number of individuals being detained while waiting for treatment.

Background

From FY 2000-01 to FY 2015-16, Colorado saw a 336 percent increase in competency evaluation orders and a 671 percent increase in people who need competency restoration in order to proceed with their case.¹ This has outpaced the number of in-patient hospital beds at the Colorado Mental Health Institute in Pueblo (CMHIP) and in the Restoring Individuals Safely and Effectively (RISE) program in Arapahoe County, which offers in-patient restoration services. The shortage of treatment beds has resulted in many offenders with mental health disorders waiting for treatment in jail. Additional information about this issue and how competency is handled in the criminal justice

system, is available here: <http://leg.colorado.gov/publications/competency-criminal-trial-colorado>.

Once an offender is deemed to be competent to stand trial and found guilty, he or she may be sent to the DOC. According to the DOC's annual report, the percentage of inmates with medium to severe mental health needs increased from 33 percent in 2012 to 40 percent in 2017.

Medication in Jails

Many of the individuals waiting in jails for a competency evaluation or restoration require daily doses of psychotropic drugs.

Prescribing medication. Because each jail is run by a different county, the procedures for administering these medications vary. However, state law requires any jail that administers medications to have a qualified staff member on duty when drugs are being administered and maintain a written record of each medication administered.² Most jails also keep a formulary of necessary medications and allow administration of drugs under the supervision of a registered nurse. Jails, according to their policies, may require a physician to prescribe medication with each prescription subject to review by the jail's physician or other health authority. Some jails require an inmate's primary physician to fill out a form indicating the inmate's medication needs before the inmate arrives in jail, if possible.

¹Colorado Department of Human Services Press Release (2017).

²Section 25-1.5-302 (1) C.R.S.

According to some jails' policies, inmates are not allowed to bring medications from home into a jail.

Involuntary medication. If an inmate is having a psychotic emergency and refuses necessary medication, a county may transfer the inmate to a hospital for involuntary administration of the medication. Once there, a physician must petition the court for permission to administer the drugs. If the court agrees, the inmate is given the drugs and then transferred back to the jail. Jail health professionals may continue to administer the drugs for the length of time outlined in the petition. If there is a medical emergency, the inmate is always transferred to a hospital.

Medication in Prison

Offenders sentenced to the DOC have access to necessary medication. In the DOC, the Division of Clinical Services handles all medications.

Prescribing medication. Medications available for inmates are kept on a formulary and are administered daily by trained personnel. Medicines are only prescribed when they are clinically indicated in an offender's written treatment plan. Each prescription must have a stop order time and be reevaluated by the prescribing provider prior to its renewal. If an inmate needs medication not listed on the formulary, the prescribing provider may submit a Non-Formulary Drug Request to the Non-Formulary Committee; or if it is a chronic pain medicine, through the Pain Management Committee. When inmates are released from prison, those who need psychotropic drugs are given a 30-day supply of the medication.

Involuntary medication. Although all inmates have a right to refuse medication, an inmate who is a danger to self and others or gravely disabled can be forced to take medication. In this case, an inmate will receive a written notification that involuntary medication is being requested and that there will be a hearing in front of the Involuntary Medication Hearing Committee in 24 hours. The

committee is composed of a hearing officer, a psychiatrist, a psychologist, and one other mental health clinician. During this hearing, an inmate may refute any witness who is brought up and may argue why medication is not necessary. If involuntary medication is approved by the committee, it is only approved for 180 days. After that, another hearing must be held for an extension.

Emergency situations and involuntary medication. In emergency situations, an inmate can be forced to take medication without a hearing. In these situations, a psychiatrist gives the order to medicate the inmate and must review and renew orders every 24 hours until the emergency is over, or the inmate voluntarily submits to taking the medication. Emergency medication may only be authorized for up to ten days unless an extension is authorized by DOC's Chief of Psychiatry.

2018 Legislation

During the 2018 legislative session, the Colorado General Assembly passed three bills concerning offenders with a mental health disorder who need treatment.

Senate Bill 18-249. This bill establishes a pilot program to divert low-level offenders suffering from mental health disorders out of the criminal justice system and into a community health organization. The program will screen offenders in four judicial districts for mental illness and divert such individuals out of the criminal justice system and into Community Treatment Programs.

Senate Bill 18-250. This bill establishes a program designed to adequately staff jails with behavioral health providers who will conduct behavioral health screenings, prescribe psychiatric medication, and provide counseling and substance use disorder treatment.

Senate Bill 18-251. This bill places a behavioral health liaison in each judicial district to facilitate communication and collaboration between the judicial system and the behavioral health system.