BHDCJS Hearing on June 15th

Adult Competency Subcommittee

Chair: Dr. David Iversion

Legislative Concept One:

Allowing the Office of Civil and Forensic Mental Health (OCFMH) the ability to independently re-evaluate cases deemed tier 2 (or greater) prior to restoration without seeking approval from attorneys or judges.

Criteria to Guide Placement ; Inpatient Restoration

Problem: The Forensic Navigators with OCFMH provided care coordination to 1,005 incarcerated individuals waiting for competency evaluations, waiting for inpatient restoration, receiving inpatient restoration services, and individuals returning to county jails from inpatient restoration services. The navigators have over 500 face-to-face contacts with clients. During the scope of their duties and in conjunction with jail mental health services, competency enhancement programs, and clinical consultation with licensed clinical coordinators at OCFMH, navigators are finding many clients that could be re-evaluated by a licensed psychologist. The goals are usually for the client to receive community placement; or because there is a belief acuity has changed and the client is now competent and could potentially be moved from a jail setting depending on risk factors.

- There are currently 462 clients waiting in jails for inpatient restoration services.
- The majority of the clients are tier II (which means "may" need a hospital level of care).
- Acuity is fluid. Those with substance issues and/or medication stabilization may not require hospital care upon a re-evaluation.

Solution/Concept: Adding legislation that OCFHM could re-evaluate a client, at any point, that a mental health clinician or a forensic navigator believes there has been a change in competency/acuity. OCFMH believes there should be parameters to ensure a client has not been re-evaluated prematurely. By utilizing the jail mental health teams, and the clinical coordinator at OCFMH; we believe appropriate referrals would occur. Additionally, OCFHM does not have qualified resources to conduct re-evaluations on every client in jail; this would ensure that redundant or inappropriate evaluations would not occur. Although not all of California's legislation would be appropriate for Colorado, the bed cap model utilizes re-evaluations as an important part of clients services.

Considerations: There would still need to be a partnership with attorneys. The goal should always remain in the clients best interest. Defense attorneys should still be consulted and informed to ensure a transparent process of re-evaluations is occurring.

Data or evidence: From 2022-2023, the 34 re-evaluations that OCFMH was allowed to complete resulted in 70% of the clients being opined competent or became bond eligible due to changes in acuity. Only 34 of 220 clients were allowed to have a re-evaluation granted by the defense attorney. A client with a low level felony/misdemeanor could be incarcerated for over six months due to current restoration waitlists. The waitlist is presently 462 clients.

Statutory evaluators are asked to provide an opinion within 21 days of receiving a jail competency order. This is often not enough time to truly assess if a person needs medication stabilization; there are underlying substance issues; or if the person has a brain injury or neurological disorder that may impede on their ability to fully participate in the evaluation. On May 18, 2023, California presented legislation that allows psychologists to opine on competency without seeking legal permission. Their data shows that 30% of their clients have been restored to competency after re-evaluations. It should be noted that they perform re-evaluations on all clients. Colorado is requesting re-evaluations of selected clients only. California IST Growth Cap Presentation: California Legislation

Legislative Concept Two:

Expanding information sharing requirements for individuals in the competency system between jurisdictions and all levels of the judicial system.

Problem: Many times, clients have competency raised (again) when there is an active restoration order. Additionally, the client may already be connected to mental health services and/or be connected to case workers/liaison, so arresting or starting the competency process all over again is harmful to the client and keeps the person “stuck” in the system.

Individuals with behavioral health issues are overrepresented in jails and prisons across the United States. Most of these individuals return to their communities, families, and social networks and subsequently require community-based behavioral and physical health care services that are not always available. Unfortunately, people who need access to quality community-based care may be arrested instead.

Solution/Concept: Flagging cases that have been in, or are in, the mental health system. For example: clients who are incompetent for a period of time of 6 months or more who are moving toward civil or other mental health solutions. This means collaboration between community providers and criminal justice professionals is essential for ensuring continuity of care and care as is coordination during transitions to and from incarceration and sustaining treatment and supports both in correctional settings and in the community. This includes sharing information, responsibility, and accountability. Clarifying roles and responsibilities, ensuring treatment and supervision efforts are complementary, and working collaboratively with individuals to identify

and meet their treatment and supervision goals are the cornerstones of effective partnerships. For individuals under the supervision of community corrections, partnering with parole and probation professionals can facilitate coordinated care and adherence to supervision requirements. Finally, case management for justice-involved individuals incorporates treatment, social services, and social supports that address prior and current involvement with the criminal justice system and reduce the likelihood of recidivism reducing the waitlist and clients being unduly detained.

This would require a universal portal that all justice agencies can access to understand a person's competency and mental health service statuses.

Considerations: Upon contact with law enforcement there would be a portal/and or data system for officers to confirm a person is already connected to mental health services. Next Judicial partners such as pre-trial, probation, community corrections, would be able to enter the portal or data system to see what services clients are currently receiving. This would further allow community mental health centers to see what services clients are receiving and work in conjunction with other agencies to create a true comprehensive mental health team.

Data or evidence: OCFMH has data that shows over 50% of clients have a new competency order in the last six months or their present order was regressed or changed to a more restrictive order due to non-compliance or new charges. The attached data also shows many clients have multiple orders in multiple jurisdictions. Currently there is not an efficient way for agencies to know when competency is raised in another jurisdiction.
Frequent Flyers

Legislative Concept Three:

Funding incentives and technical assistance for judicial competency dockets. Rather than trying to force judicial districts to create competency dockets; this proposal incentivizes districts to create competency dockets. We believe that would give us more buy in and a better quality of competency dockets to assist clients. This concept is also utilized in the California bed capacity model to help control clients on the waitlist.

Problem: Many Judicial Districts lack the resources it takes to start a competency docket. Another concern is trying to force judges into having a docket who may already be successfully serving mental health clients through diversion efforts, such as Boulder County. Many dockets are already large and it would require resources to divert clients; this may prevent some courts from truly investing in the efficacy of the project for fear of another big docket without added resources.

Data or evidence: Larimer County has become the leader in competency dockets. Between January and March 2023, 11 felony cases were closed or dismissed, and 11 misdemeanor cases were closed or dismissed. This has had a significant impact on clients being diverted to appropriate services or becoming bond eligible.
Competency Dockets ; Competency Dockets First Quarter Data 2023

Solution/Concept: By providing funding and/or resources for districts that want competency dockets it would allow more clients to be diverted to true competency courts. Specialty treatment courts have proven effective at reducing crime and recidivism and in helping people to make positive changes in their lives and become contributing members of their communities.

Competency courts serve individuals facing incarceration for criminal activity rooted in substance use and mental health disorders. These courts have demonstrated that it is far more effective to bring together resources in one place and connect individuals to specific treatment and resources, including housing, treatment, or family reunification support. The term "competency" is a specially designed court calendar or docket with the purpose of reducing recidivism for mental health and substance-abusing offenders and increasing the likelihood of successful habilitation through early interventions allowing the clients to be diverted to the most appropriate setting.

Legislative Concept Four:

Streamlining the adult competency statutes.

Problem: This proposal would be a review and technical clean-up of the adult competency statue.

Data or evidence: Stakeholders believe that a technical clean up is warranted.

Solution/Concept: This proposal would be a review and clean-up of any antiquated or ineffective language that is impeding on a client's success in the competency system. Some suggestions that may be appropriate include:

Example One: The statutory provision referenced below is 16-8.5-105(1)(d)., would need a complete overhaul with consideration of competency and incompetent clients.

(d) If a defendant is in the department's custody for purposes of the competency evaluation ordered pursuant to this article 8.5 and the defendant has completed the competency evaluation and the evaluator has concluded that the defendant is competent to proceed, the department may return the defendant to a county jail or to the community, as determined by the defendant's bond status. If the evaluator has concluded that the defendant is incompetent to proceed and that inpatient restoration services are not clinically appropriate, and outpatient restoration services are available to the defendant in the community, the department shall notify the court and the court liaison, and the department shall develop a discharge plan and a plan for community-based restoration services in coordination with the community restoration services provider. The court shall hold a hearing within seven days after receiving the notice, at which the department shall provide to the court the plan for community-based restoration services, and the court may enter any appropriate orders regarding the custody of the defendant and his or her bond status. The department shall advise the defendant of the date and time of the court hearing. If the department is returning the defendant to a county jail, the county sheriff in the jurisdiction where the defendant must return shall take custody of the defendant within seventy-two hours after receiving notification from the department that the defendant's evaluation is completed. At the time the department notifies the sheriff, the department shall also notify the court and the court liaison that the department is returning the defendant to the custody of the jail.

Example Two: Colorado Statute (C.R.S. § 16-8.5-101):Defines a “competency evaluator” as a licensed physician who is a psychiatrist or a licensed psychologist, each of whom is trained in forensic competency assessments. The statute also allows for a psychiatrist or psychologist in forensic training and practicing under the supervision of a psychiatrist or psychologist with expertise in forensic psychiatry or forensic psychology.

Would/shall need an overhaul to allow appropriate trained social workers and forensic nurses to complete competency evaluations on out of custody clients and those with lower level misdemeanors.