

BHDCJS Mental Health Hold (MHH) Subcommittee Recommendations

DRAFT 8-11-22

Recommendations

Rework the contracts between the state and the 17 mental health centers to include required services for each person found (Incompetent to Proceed) ITP released to out-of-custody status.

Divert individuals for whom competency has been questioned to district mental health courts using 27-65 outpatient commitment provisions and mental health center support services. Expected time under the jurisdiction of the mental health court is six months.

Background

Involuntary commitment is utilized in every state for people with potentially life-threatening behavioral health (BH) conditions who are suicidal, homicidal, or gravely disabled. The MHH Subcommittee was reconstituted in 2019 due to ongoing concerns about the quality of involuntary care in Colorado and whether it is being practiced lawfully and ethically. These concerns directly impact people with behavioral health disorders involved in the criminal justice system.

A successful resolution of the 2019 Settlement Agreement concerning defendants found Incompetent to Proceed (ITP) will be of benefit to all Coloradans and represent substantial improvement with Colorado's challenge of "criminalization" of people with serious behavioral health conditions. Conversely, struggles in resolving the Agreement may be considered a sign of the system's ill health. The MHH Subcommittee is increasingly focused on this issue.

We further believe that criminalization is the result of our state's collective failure to 1. Provide necessary mental health treatment for Colorado citizens on the front end, 2. Keep pace with an increasing population's treatment needs, 3. Provide for the collective needs of those people who can benefit from involuntary BH care, and 4. Successfully divert eligible people with low-level legal charges from the criminal justice system into treatment. We believe that successful resolution of the Agreement will not be possible without a true, public BH safety net.

Impact

- Decrease the influx of people with low-level charges into the ITP evaluation and restoration process, many of whom "should not be there" according to stakeholders.
- Better ensure success for ITP defendants with access to BH health care and resolution of legal charges.

Subcommittee Process

The MHH Subcommittee meets monthly and provides monthly reports on its discussions, research, collaborations, and recommendations to the BHDCJS Task Force. Its recommendations must be approved by majority vote in the Task Force before consideration by the LOC.

Legislative Recommendation

Mandated acceptance of ITP defendants into MHC safety net services.

Increase funding for diversion programs to cover all 22 judicial districts; establish training, expectations, support staff; monitoring; and reporting requirement.

Other Areas of Interest

Expanding the criteria for who may evaluate and restore to competency ITP defendants

Streamline Medicaid formularies to ease the two-drug initial failure requirement before making use of atypical antipsychotics

Administrative costs for the state's mental health centers (MHCs) and other significant treatment providers

Executive pay levels at the MHCs and other significant treatment providers who are reliant upon public funds

STAR Program funding increase

Felony assault charges against first responders and its impact on criminalization

Build upon success of SB22-010: Reach the goal of diversion programs and mental health courts in all 22 state judicial districts.

Identify recidivism rate of people found ITP: how many people go through restoration more than once? Why?

ACT services with AOT capabilities in every state MHC; enhance training, funding, fidelity, and compliance

Forensic ACT teams in each MHC to better serve clients/defendants who are sometimes aggressive

References

1. <https://verdugopsych.com/mental-health-diversion-an-overview-of-the-legal-guidelines-and-requirements/>
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3. <https://yellowscene.com/2022/08/02/district-attorney-expands-successful-mental-health-diversion-program/>
4. <https://www.treatmentadvocacycenter.org/storage/documents/2013-diversion-study.pdf>
5. https://www.samhsa.gov/gains-center/mental-health-treatment-court-locator/adults?field_gains_mhc_state_value=CO