

To: House Judicial Committee

Date: 1/30/2022

Subject: Written Testimony in Support of HB22-1061

My name is Elissa Ball, M.D. I am a retired forensic psychiatrist. I worked at Colorado Mental Health Institute at Pueblo (CMHIP) for nearly 30 years. I treated women found Not Guilty by Reason of Insanity (NGRI) from 1985 until 1991. I was the Chief of Forensic Psychiatry from 1989 to 1991. I was Chief of Psychiatry and Chief of Medical Staff from 1991-1992. From 1992 until May 2015, I treated men and women found NGRI. Over this period of time, I provided treatment at every level of security (maximum security through Conditional Release (CR)).

During my career with CMHIP, I observed extensive periods of time during which clinicians and administration provided the highest standard of care to all patients, including those found NGRI. For certain periods of time, administration did not advocate for empirically supported treatment approaches, but they did not interfere with such treatment. In 1999, CMHIP forensic patients filed a class action suit alleging violations of their right to treatment. They alleged “warehousing” of forensic patients. As a result of this suit, a 2002 settlement resulted in ongoing monitoring by court-appointed forensic experts. Administration began to actively support staff training and implementation of evidence-based forensic treatments. Patients who had been housed at CMHIP for some 20 years were found to be able to live safely and successfully in the community. Low risk patients were returned to community treatment much more quickly. Evidence-based treatments such as Dialectical Behavioral Therapy (DBT) and Risk, Need, Responsivity (RNR) treatment became standard. Staff were taught the skills to reinforce behavioral change. Lengths of stay decreased. As one who often testified at hearings for increased levels of freedom including Conditional Release (CR) and Unconditional Release (UCR), it appeared to me that we made headway throughout Colorado teaching judges and outpatient mental health providers the basics of risk assessment, stages of change, and management of risk. CMHIP was respected by the community. In fact, it became internationally known as providing cutting edge forensic clinical care.

We had many good years. Patients progressed. Treatment was individualized. Administration and clinicians appeared to have common goals. Unfortunately, when court-mandated monitoring ended with the termination of the Settlement Agreement, administration gradually withdrew their support for the provision of quality forensic treatment.

Reviewing the most current version of bill HB22-1061, the changes recommended will reinstitute and institutionalize some of the positive changes in the management of forensic patients that occurred with the 1999 Neiberger law suit. I do recommend a single amendment that I believe will further these same goals (see below.)

Review of specific reforms recommended:

1. Discretionary admission of an individual found NGRI to the state hospital: this would open up occasional beds for civil and Incompetent to Proceed patients. Though probably not a substantial percentage of NGRI acquittees, there are definitely some individuals who are harmed by inpatient treatment and/or could be safely and successfully treated as outpatients.
2. Maximum terms of inpatient treatment not to exceed 50% of maximum terms for those found guilty of felonies less than Class 2 felonies for the most serious NGRI crime: This would likely open up a great

number of beds. The Neiberger lawsuit demonstrated that without external monitoring by independent experts, CMHIP not infrequently incarcerated individuals well beyond such a maximum term. This lawsuit provided strong evidence that many of these individuals were able to live safely and successfully in the community if provided appropriate outpatient treatment and supports.

Proposed amendment: I recommend that maximum terms of inpatient incarceration not exceed maximum terms of prison incarceration for Class 1 and 2 felonies (similar to Class 3, 4, etc., except that there should be no 'good time' built into the time limit.) Danger to the community correlates with an individual's level of risk, not with the specific crime that resulted in the NGRI commitment. Murder charges with an individual with a long history of criminal behavior are associated with a higher risk of future dangerous behavior. A single murder charge associated with a psychotic disorder, for example, but no prior criminal behavior is generally not associated with future criminal behavior. The current wording of this bill unfairly categorizes this latter group as high risk. Research has demonstrated that High risk individuals are indeed the individuals who require intensive risk-based treatment to decrease their risk to the community. This same research has demonstrated that provision of intensive inpatient treatment of Low Risk individuals often increases their risk to the community if eventually released. In addition, the current bill's wording allows for evaluation of the NGRI acquittee and ongoing civil commitment should the evaluation demonstrate an ongoing unacceptable level of risk if released.

3. Require courts to review all NGRI cases every 2 years in order to ensure ongoing justification for inpatient treatment: This would go a long way toward ensuring that NGRI defendants actually require ongoing inpatient treatment and incarceration and would provide an opportunity for the court to intervene in those cases in which CMHIP has failed to implement adequate treatment. Again, this would open up some needed beds for civil patients and jail patients awaiting a CMHIP bed.
4. Mandating that release evaluations include specific content including a comparison of ongoing treatment as an inpatient versus as an outpatient: CMHIP is currently not cognizant of treatment options in the community and therefore over-estimates the need for inpatient care. This bill would require greater communication and understanding of community resources. Other requirements regarding information to be included would result in much-improved and thoughtful reports, thereby providing the courts with more useful information upon which to make their decisions.

CMHIP has the capacity to provide excellent treatment which both protects the community and allows NGRI defendants the opportunity for a second chance at a meaningful life in the community.

Thank you for the opportunity to give input. Should the House Judiciary Committee have questions or require increased information from me, please feel free to contact me at 719-214-6081 or elissaball@msn.com