

SERVICES FOR FORENSIC CLIENTS

CHAPTER 13

DESCRIPTION OF FORENSIC POPULATION

The forensic program for the State of Missouri is designed to provide services to all circuit court-ordered clients for evaluation, treatment and follow-up under the provisions of Chapter 552 and other chapters of the Revised Statutes of Missouri. These individuals have been charged with a crime or found not guilty due to mental disease or defect of some criminal activity. The term mental disease or defect has been defined by statute to include congenital and traumatic mental conditions as well as disease. The term does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct, whether or not such abnormality may be included under mental illness, mental disease or defect in some classifications of mental abnormality or disorder. The term also does not include alcoholism without psychosis or drug abuse without psychosis or an abnormality manifested only by criminal sexual psychopathy. § 552.010, RSMo.

These clients are most often referred by the circuit court and may be awaiting trial; awaiting sentencing; incompetent to proceed; condemned to death; found not guilty by reason of mental disease or defect; currently in the custody of Department of Corrections but exhibiting behaviors indicating a possible need for treatment in a Department of Mental Health (DMH) facility (jail transfers); or may be referred by the Board of Parole and Probation.

As of 2003, the inpatient forensic population (consisting of those found not guilty by reason of mental disease or defect [NGRI] or those incompetent to stand trial) was approximately 479 clients in six facilities, decreasing from 560 clients in 1989.

PRETRIAL EVALUATIONS

The forensic population includes those individuals who have been found by the court as in need of an evaluation to determine if they (a) are competent to stand trial; (b) have a mental disease or defect; (c) are responsible for the alleged action; (d) need to be hospitalized pending the proceedings; and (e) possess a state of mind which is an element of the offense. The evaluations may be requested by the prosecuting attorney, the accused, or upon his behalf, by the court on its own motion. The court determines the time, place and conditions under which the exam shall take place. If the order requires the Director of the Department of Mental Health to have the accused examined, the director determines the time, place and condition of the examination. These pretrial evaluations are primarily conducted on an outpatient basis, with the accused accompanied by local law enforcement officials for the two to eight hour interview. Some evaluations may be conducted by sending a psychiatrist to the jail to complete the interview. Only when the client's behavior warrants it is an admission made to the inpatient setting for the completion of the evaluation.

Generally, the number of pretrial evaluations has held steady at 475-500 per year. The Department of Mental Health has Certified Forensic Examiners to complete these reports, provide the report to the appropriate court, and provide testimony if necessary.

NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT (NGRI)

“A person is not responsible for criminal conduct if, at the time of such conduct, as a result of a mental disease or defect, such person was incapable of knowing and appreciating the nature, quality or wrongfulness of such person’s conduct.” No evidence of an individual’s mental disease or defect is admissible in court unless the individual pleads NGRI or gives the court notice that he will rely on the defense of NGRI. Once the individual relies on NGRI, a pretrial evaluation will be conducted. § 552.030, RSMo (2000).

If the court accepts the individual’s plea of NGRI, the individual will be committed to the custody of the Department of Mental Health (DMH). Custody will also be given to the facility in which the individual resides, unless the individual is eligible for immediate conditional release. The court will hold a hearing to determine if an individual is eligible for a conditional release only if the individual was not charged with a dangerous felony, first-degree murder or sexual assault and the exam ordered by the court contains an opinion that the individual should be conditionally released to the community.

TYPE OF RELEASE

At the other end of the spectrum lie those instances in which a person found not guilty due to mental disease or defect is determined ready for one of three types of release. Either the head of the facility in which the client is residing or the client may file for a trial release, a conditional release or an unconditional release.

Trial Release

A trial release is time-limited for no more than 96 hours; whereas a conditional release returns the client to a community setting. That setting may be with family or a structured community placement. Both the trial and conditional release petitions must be filed in the probate court located in the county in which the client’s facility is found, except in certain circumstances set forth in Missouri Statute. A hearing is held on the trial release application only when the prosecuting attorney objects to the proposed release within the statutory fifteen days after proof of service. § 552.040, RSMo (2000).

Conditional Release

An individual being held in a mental health or habilitation center based on NGRI may file for a conditional release. In most cases, the individual or the head of the facility may file an application for conditional release in the probate court of the county in which the facility is located. If the individual was found NGRI for a dangerous felony, first-degree murder or sexual assault, the application for conditional release must be filed in the committing court. A

copy of the application will be served on the prosecutor of the county in which the application was filed. Victims will also be notified. The application must also specify the conditions of release and length of the conditional release. § 552.040, RSMo.

A hearing will be held to determine whether the individual should be conditionally released. The following factors will be considered:

- Nature of the offense
- The person's behavior in the mental health facility
- Elapsed time between the hearing and the last reported unlawful or dangerous act
- Nature of the person's proposed release plan
- The presence or absence of family or others in the community willing to accept responsibility to help the individual meet the requirements of conditional release
- Whether other conditional releases have been granted without incident

The individual must prove with "clear and convincing evidence" that he/she is not likely to be dangerous to others. If the application is denied, the individual may reapply one year after the denial.

Revocation of Conditional Release

An individual who is living in the community on conditional release may have his/her conditional release revoked if the Director of the Department of Mental Health, or his designee, have "reasonable cause" to believe that the individual violated any conditions of his/her release.

The individual has the right to a hearing within 96 hours of the provisional revocation (excluding Saturdays, Sundays and state holidays). The individual may request an extension in order to obtain an advocate to assist him/her at the hearing. The individual will receive 24 hours notice before the hearing. The hearing will be held in front of an independent Hearings Officer. The Hearings Officer will revoke the conditional release if he/she determines the individual violated a condition of release or if the least restrictive environment for the individual's needs and public safety is inpatient hospitalization. § 552.040, RSMo (2000).

Unconditional Release

The individual or the head of the facility may file an application for unconditional release in the court that committed the individual to the Department of Mental Health.

The following factors will be considered at the hearing:

- Whether the individual has mental disease or defect
- Nature of the offense
- Behavior while in the Mental Health Facility
- Time elapsed between the hearing and the last reported unlawful or dangerous act
- Conditional release without incident

- Not dangerous to self or others dependent on taking drugs, medicine or narcotics
- The nature of the person's proposed release plan
- Presence or absence of family or others in the community willing to accept responsibility to help the individual meet the requirements of conditional release
- Whether other conditional releases have been granted without incident

The party seeking unconditional release must prove by "clear and convincing evidence" the individual does not have or is not likely to have in the reasonable future a mental disease or defect that will make him dangerous to himself or others. The hearing may be waived if all parties and the court agree. § 552.040, RSMo (2000).

DESCRIPTION OF CURRENT AVAILABLE SERVICES

There are seven mental health facilities serving forensic clients. Fulton State Hospital, Northwest Missouri Psychiatric Rehabilitation Center, Southwest Missouri Psychiatric Rehabilitation Center, Southeast Missouri Mental Health Center, St. Louis Psychiatric Rehabilitation Center, Mid-Missouri Mental Health Center and Western Missouri Mental Health Center are those facilities either that have an inpatient forensic population or who conduct pretrial evaluations. In addition, forensic clients who have the sole diagnosis of a developmental disability receive treatment through the Division of Mental Retardation/ Developmental Disabilities at Marshall Habilitation Center.

One aspect of the treatment of the forensic population is geared to the restoration of competency (which addresses those individuals who have been deemed incompetent to understand the nature of the court proceedings and to assist in their own defense). This is accomplished by improving the client's cognitive understanding of the charges; factual understanding of why the charges were made; an understanding of the functions of the judge, jury, prosecuting and defense attorneys, and the client's cognitive ability to impart appropriate information to the attorneys. Another aspect of the treatment of those clients found NGRI is geared to decrease dangerousness, address the issue of public safety, decrease symptoms of mental disorder, improve the client's understanding of wrongfulness or acceptance of responsibility, and to improve the client's ability to cope with stressful situations in a socially acceptable way.

SETTING FOR TREATMENT

The determination of setting of treatment will take place on an inpatient basis except for those who are referred by the Board of Probation and Parole. Clients who are committed to the department will be placed in the least restrictive setting depending on the degree of the seriousness of the crime and observed propensity for dangerous behavior. The typical scenario is that an NGRI client moves through the levels of the Biggs Building (maximum security) of Fulton State Hospital. The client is then transferred to the Guhleman Building (medium security) of Fulton State Hospital. Once the client moves through the levels of Guhleman, he/she will move either to the Hearnese Building (minimum security) in Fulton or to the mental health facility near his original residence.

Any questions regarding the forensic program may be addressed to Director of Forensic Services and Assistant General Counsel, Department of Mental Health, 1706 E. Elm, P.O. Box 687, Jefferson City, MO 65102. That office may be reached at (573) 751-4122 or 1-800-634-9687.